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THE CIVIL CODE

OF THE

State of Montana,

Reported by the Code Commission.

IN FOUR DIVISIONS.

AN ACT

To Establish a Civil Code.

Be it enacted by the Legislative Assembly of the State of Montana:

TITLE OF THE ACT.

SECTION 1. This Act shall be known as The Civil Code of the State of Montana, and is in four divisions, as follows:

1. The first relating to persons.
2. The second to property.
3. The third to obligations.
4. The fourth contains general provisions relating to persons, property and obligations.

DIVISION FIRST.

Part I. Persons.
" II. Personal rights.
" III. Personal relations.
" IV. Corporations.

PART I.

PERSONS.

Section 2. Minors, who are.
" 3. Periods of minority, how calculated.
" 4. Adults, who are.
" 5. Unborn children.
" 6. Persons of unsound mind.

Section 7. *Custody of minors, etc.*
" 8. *Powers of minors.*
" 9. *Contracts of minors.*
" 10. *When minors may disaffirm.*
" 11. *Cannot disaffirm contracts for necessaries.*
" 12. *Nor certain obligations.*
" 13. *Contracts of persons without understanding.*
" 14. *Contracts of other persons of unsound mind.*
" 15. *Powers of persons whose incapacity has been adjudged.*
" 16. *Minors liable for wrongs, but not for exemplary damages.*
" 17. *Minors may enforce their rights.*

Sec. 2. Minors are:

1. Males under twenty-one years of age.

2. Females under eighteen years of age.

Sec. 3. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

Sec. 4. All other persons are adults.

Sec. 5. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

Sec. 6. Persons of unsound mind, within the meaning of this Code, are idots, lunatics, imbeciles and habitual drunkards.

Sec. 7. The custody of minors and persons of unsound mind is regulated by Part III., of this division.

Sec. 8. A minor cannot give a delegation of power.

Sec. 9. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this Title, and to the provisions of the Title on marriage.

Sec. 10. In all cases other than those specified by Sections 11 and 12, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority, or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

Sec. 11. A minor, or a person of unsound mind, cannot disaffirm a contract otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

Sec. 12. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express anthority or direction of a statute.

Sec. 13. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

Sec. 14. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the Chapter on Rescission, of this Code.

Sec. 15. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom, cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

Sec. 16. A minor, or person of unsound mind, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

Sec. 17. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PART II.

PERSONAL RIGHTS.

Section 20. General personal rights.
" *21. Defamation, what.*
" *22. Libel, what.*
" *23. Slander, what.*
" *24. What communications are privileged.*
" *25. Protection to personal relations.*
" *26. Right to use force.*

Sec. 20. Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

Sec. 21. Defamation is effected by:

1. Libel.
2. Slander.

Sec. 22. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

Sec. 23. Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime.

2. Imputes in him the present existence of an infectious, contagious, or loathsome disease.

3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.

4. Imputes to him impotence or want of chastity; or,

5. Which, by natural consequence, causes actual damage.

Sec. 24. A privileged publication is one made:

1. In the proper discharge of an official duty.

2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

3. In a communication, without malice, to a person interested therein by one who is also interested, or by one who stands in such a relation to the person interested as to afford a a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof.

Sec. 25. The rights of personal relation forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master.

3. The seduction of a wife, daughter, orphan sister, or servant.

4. Any injury to a servant which affects his ability to serve his master.

Sec. 26. Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

PART III.

PERSONAL RELATIONS.

Title I. Marriage.
" *II. Parent and child.*
" *III. Guardian and ward.*
" *IV. Apprentices.*

TITLE I.

MARRIAGE.

Chapter *I. The contract of marriage.*
" *II. Divorce.*
" *III. Husband vnd wife, dower.*

CHAPTER I.

THE CONTRACT OF MARRIAGE.

Article *I. Validity of marriage.*
" *II. Authentication of marriage.*
" *III. Judicial determination of void marriages.*

ARTICLE I.

Section *30. What constitutes marriage.*
" *31. Minors capable of contracting marriage.*
" *32. Marriage, how manifested and proved.*
" *33. Certain marriages voidable.*
" *34. Incompetency of parties to.*
" *35. Polygamy forbidden.*
" *36. Released from marriage contract, when.*
" *37. Marriages contracted without the State.*
" *38. Certain parts of Code not applicable.*

Sec. 30. Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual and public assumption of the marital relation.

Sec. 31. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of sixteen years or upwards, and not otherwise disqualified is capable of consenting to and consummating marriage.

Sec. 32. Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Sec. 33. If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable.

Sec. 34. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Sec. 35. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved.

2. Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

Sec. 36. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

Sec. 37. All marriages contracted without this State, which would be valid by the laws of the country in which the same were contracted, are valid in this State.

Sec. 38. The provisions of other portions of this Code in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

Section 40. Marriage, how solemnized.
" *41. By whom solemnized.*
" *42. License must be obtained.*
" *43. Consent of parent or guardian.*
" *44. License, what to contain.*
" *45. License, when refused.*
" *46. Clerk may require evidence.*
" *47. Duty of person solemnizing.*
" *48. Form of certificate.*
" *49. Penalty for failure to return or record.*
" *50. Want of authority in person officiating, effect of.*
" *51. Certificate and copy, prima facie evidence.*
" *52. Certificates of marriage to be given.*
" *53. No form required.*
" *54. Fines for benefit of schools.*
" *55. Declaration of marriage, how made.*
" *56. Declaration to contain, what.*
" *57. Declaration to be acknowledged and recorded.*
" *58. Action to determine validity of.*

Sec. 40. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this Article; but non-compliance with its provisions does not invalidate any lawful marriage.

Sec. 41. Marriage may be solemnized by either a justice of the Supreme Court, judge of the District Court, justice of the peace, priest or minister of the gospel of any denomination, or the mayor of any city. Marriages may also be solemnized by religious societies according to the usage of such societies.

Sec. 42. Previous to the solemnization of any marriage in this State, a license for that purpose must be obtained from the county clerk of the county wherein the marriage is to take place.

Sec. 43. Where either party is a minor no license shall be granted without the written consent of the father, if living, if not, then of the mother of such minor or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

Sec. 44. When application shall be made for a license to the county clerk, he shall upon the granting of such license state therein the Christian and surnames of the fathers of both parties; the Christian and maiden names of the mothers of both parties; the Christian and surnames of both parties, the residence of both parties, their places of birth, their respective ages, their color, and whether previously married or divorced, which license shall prior to the issuing thereof be entered of record in the office of the county clerk, in a suitable book to be provided for that purpose.

Sec. 45. If on such testimony being given it shall appear that either of the parties is legally incompetent to enter into such a contract, or that there is any impediment in the way, or if either party is a minor, and the consent mentioned in Section 43 shall not be given, or if either party has been divorced, and the time mentioned in Section 91, has not elapsed, the said county clerk shall refuse to grant a license.

Sec. 46. In case of application for a marriage license, which may be made by either party, or his or her agent or attorney, the county clerk may in his discretion require that the necessary information be given under oath, and he is hereby authorized to administer oaths to such applicants for such purpose. When parties apply by mail for such license their statement of the facts necessary to properly make out such license must be accompanied by an affidavit as to the correctness thereof, taken before a justice of the peace or notary public, or some other person authorized to administer oaths; and in case of a minor, the consent of the parent or guardian must be given in the same manner.

Sec. 47. No person authorized to solemnize marriages shall perform such ceremony until the parties have given him the license issued by the county clerk for their marriage; and when he has completed any such ceremony, he shall enter upon such license a certificate of such marriage showing when and where it occurred, and such certiffcate shall be attested by two witnesses to such ceremony; he shall, within thirty days after such marriage has been solemnized, return said license and certificate to the county clerk, who shall record the certificate in the same book where the said marriage license is recorded.

Sec. 48. The certificate mentiond in the next preceding section shall be substantially in the following form:

The State of Montana, }
} ss.
County of ———— }

This is to certify that the undersigned, a justice of the peace of said county, (minister of the gospel, judge, etc., as the case may be,) did on the —— day of ———, A. D. 18——, join in lawful wedlock ———— and ————, with their mutual consent, in the presence of ———— and ————, witnesses.

Witness my hand this —— day of ———, 18——.

Sec. 49. Every person solemnizing a marriage who shall neglect to make and deliver to the county clerk a certificate thereof, within thirty days after having solemnized such marriage, shall forfeit for such neglect a sum not less than ten nor more than fifty dollars; and any county clerk who shall neglect to record such certificate so delivered within one month after its delivery, shall forfeit the like penalty.

Sec. 50. No marriage solemnized before any person professing to have authority shall be deemed or regarded void; nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Sec. 51. The original certificate of marriage, made as prescribed in this Article, and the record thereof by the county clerk, or a copy of such record duly certified by the county clerk, shall be received by all courts in all places as presumptive evidence of such marriage.

Sec. 52. Whenever a marriage shall have been solemnized pursuant to the provisions of this Article, the person who solemnized the same shall give to each of the parties, on request, a certificate under his hand, specifying the names, ages and places of residence of the parties married, the names and residences of at least two witnesses who were at such marriage, and the time and place thereof.

Sec. 53. In the solemnization of marriage no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate, or minister, or of attending witnesses, that they take each other as husband and wife, and in any case there shall be at least two witnesses present at the ceremony.

Sec. 54. All fines arising under this Article in consequence of a breach of this Article, shall be paid into the county treasury for the use of the common schools.

Sec. 55. Persons married without the solemnization provided for in Section 41 must jointly make a declaration of marriage, substantially showing:

1. The names, ages, and residences of the parties.
2. The fact of marriage.
3. The time of marriage.
4. That the marriage has not been solemnized.

Sec. 56. If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages, and residences of the parties.
2. The fact of marriage.
3. That no record of such marriage is known to exist.

Such declaration must be subscribed by the parties and attested by at least three witnesses.

Sec 57. Declarations of marriages must be acknowledged and recorded in a like manner as marriage certificates.

Sec 58. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the District Court, to have the validity of the marriage determined and declared.

ARTICLE III.

JUDICIAL DETERMINATION OF VOID MARRIAGES.

Sec. 59. Either party to an incestuous or void marriage may proceed by action in the District Court, to have the same so declared.

CHAPTER II.

DIVORCE.

Article I. Nullity.
" *II. Dissolution.*
" *III. Causes for denying divorce.*
" *IV. General provisions.*

ARTICLE I.

NULLITY.

Section 65. Cases where marriage may be annulled.
" *66. Action to obtain degree of nullity in certain cases, when and by whom commenced.*
" *67. Children of annulled marriage.*
" *68. Custody of children.*
" *69. Effect of judgment of nullity.*

Sec. 65. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

4. That the consent of either party was obtained by fraud. unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabitated with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues and appears to be incurable.

Sec. 66. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in Subdivision 1, by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in Subdivision 2: By either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in Subdivision 3: By the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in Subdivision 4: By the party injured within two years after the discovery of the facts constituting the fraud.

5. For causes mentioned in Subdivision 5: By the injured party within two years after the marriage.

6. For causes mentioned in Subdivision 6: By the injured party within four years after the marriage.

Sec. 67. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or where a marriage is annulled on the ground of insanity, children begotten before the judgment must be specified in the judgment, and are legitimate and entitled to succeed in the same manner as legitimate children to the estate of both parents.

Sec. 68. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Sec. 69. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

Section 75. *Marriage, how dissolved.*
" 76. *Divorce, what.*
" 77. *Causes for divorce.*
" 78. *Adultery defined.*
" 79. *Extreme cruelty, what.*
" 80. *Desertion, what.*
" 81. *Who commits desertion.*
" 82. *Separation by consent not desertion.*
" 83. *Separation and intent.*
" 84. *Consent to separation revocable.*
" 85. *Desertion, how cured.*
" 86. *Husband may select home.*
" 87. *If place unfit, desertion.*
" 88. *Willful neglect, what.*
" 89. *Habitual intemperance, what.*
" 90. *Intemperance, desertion, neglect, three years.*
" 91. *Re-marriage regulated.*

Sec. 75. Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By a judgment of a court of competent jurisdiction.

Sec. 76. The effect of a judgment of divorce is to restore the parties to the state of unmarried persons.

Sec. 77. Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction of felony.

Sec. 78. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Sec. 79. Extreme cruelty is the infliction, or threat of bodily injury dangerous to life, or the repeated infliction or threat of grievous bodily injury, upon the other party, by one party to the marriage, or the repeated publication of false charges against the chastity of the wife by the husband.

Sec. 80. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Sec. 81. Departure or absence of one party from the family dwelling place, caused by cruelty or threats of bodily harm, from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

Sec. 82. Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion.

Sec. 83. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Sec. 84. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

Sec. 85. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

Sec. 86. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto it is desertion.

Sec. 87. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

Sec. 88. Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy, or dissipation.

Sec. 89. Habitual intemperance is that degree of intemperance from the use of ixtoxicating drinks which disqualifies the person a great portion of the time from properly attending to business.

Sec. 90. Willful desertion, willful neglect, or habitual intemperance must continue for three years before either is a ground for divorce.

Sec. 91. When a divorce is granted for any of the causes mentioned in Section 77, the innocent party can not marry until after the expiration of two years, and the guilty party can not marry until after the expiration of three years from the entry of the judgment of divorce; but this section shall not prevent the parties to the action for a divorce from remarrying each other at any time.

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

Section 95. *Divorces denied, on showing what.*
" 96. *Connivance, what.*
" 97. *Collusion, what.*
" 98. *Condonation, what.*
" 99. *Requisites to condonation.*
" 100. *Condonation implies what.*
" 101. *Evidence of condonation.*
" 102. *Condonation, when operates to bar divorce.*
" 103. *Concealment of facts in certain cases makes condonation void.*
" 104. *Condonation, how revoked.*
" 105. *Recrimination, what.*
" 106. *Condonation in a recriminatory defense a bar to such defence, when.*
" 107. *Divorce denied, when.*
" 108. *Lapse of time establishes certain presumptions.*
" 109. *Presumptions may be rebutted.*
" 110. *Limitation of time.*
" 111. *Divorces granted, when.*
" 112. *Divorce not to be granted by default, etc.*

Sec. 95. Divorces must be denied upon showing:

1. Connivance; or
2. Collusion; or
3. Condonation.
4. Recrimination; or
5. Limitation and lapse of time.

Sec. 96. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

Sec. 97. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be falsely represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Sec. 98. Condonation is the conditional forgiveness of a matrimonial offence constituting a cause of divorce.

Sec. 99. The following requirements are necessary to condonation:

1. A knowledge on the part of the injured party of the facts constituting the cause of divorce.

2. Reconciliation and remission of the offence by the injured party.

3. Restoration of the offending party to all marital rights.

Sec. 100. Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness.

Sec. 101. Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from successive acts of ill-treatment, which may, aggregately, constitute the offence, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

Sec. 102. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

Sec. 103. A fraudulent concealment by the offending party of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

Sec. 104. Condonation is revoked, and the original cause of divorce revived:

1. When the offending party commits acts constituting a like or other cause of divorce; or,

2. When the offending party is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Sec. 105. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

Sec. 106. When a cause of divorce is set up in the answer as a recriminatory defence, the condonation thereof is a bar to such defence unless:

1. The condonation be revoked as provided in Section 104; or,

2. Two years have elapsed after the condonation and before the accruing or completion of the cause of action alleged in the complaint.

Sec. 107. A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after its discovery by the injured party: or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after final judgment and sentence.

3. In all other cases where there is an unreasonable lapse of time before the commencement of the action.

Sec. 108. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offence, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offense.

Sec. 109. The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

Sec. 110. There are no limitations of time for commencing actions for divorce, except such as are contained in Section 107.

Sec. 111. A divorce must not be granted unless the plaintiff has been a resident of the State for one year next preceding the commencement of the action.

Sec. 112. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, and the cause must be heard in open court.

ARTICLE IV.

GENERAL PROVISIONS.

Section 115. Relief may be adjudged, where separation is denied.
" 116. Expense of action, alimony.
" 117. Orders respecting custody of children.
" 118. Support of wife and children on divorce or separation granted to wife.
" 119. Security for maintenance and alimony.
" 120. If wife has sufficient support, court may withhold allowance.
" 121. Property may be subjected to support and education of children.
" 122. Legitimacy of issue.
" 123. Same.
" 124. Disposition of homestead on divorce.
" 125. How disposed of when divorce rendered on adultery.
" 126. Such an action subject to revision on appeal.
" 127. Poor woman may sue without costs.
" 128. Notice of application for alimony.

Sec. 115. Though judgment of divorce is denied, the court may, in its discretion, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

Sec. 116. While an action for divorce is pending the court or judge may, in its or his discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. When the husband willfully deserts the wife, she may, without applying for a divorce, maintain in the District Court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court, or judge, may, in its or his discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and executions may issue therefor in the discretion of the court or judge. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

Sec. 117. In an action for divorce the court or judge may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

Sec. 118. Where a divorce is granted for an offence of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

Sec. 119. The court, or judge, may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this Chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

Sec. 120. When the wife has a separate estate sufficient to give her proper support, the court, or judge, in its or his discretion, may withhold any allowance to her out of the property of the husband.

Sec. 121. The property of the husband and wife may be subjected to the support and education of the children in such proportions as the court deems just, or the property of the guilty party only, may be subjected to such support and education.

Sec. 122. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

Sec. 123. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children, begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

Sec. 124. In case of the dissolution of the marriage by the judgment of a court of competent jurisdiction, the homestead, if selected from the separate property of either husband or wife, shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

Sec. 125. The court, in rendering a judgment of divorce, must make such order for the disposition of the homestead, as in this Chapter provided.

Sec. 126. The disposition of the homestead, as above provided, is subject to revision on appeal.

Sec. 127. Any woman suing for a divorce who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs.

Sec. 128. No order for alimony shall be made until notice of the time and place of the hearing shall be served upon the opposite party in cases when such party has appeared, and in all other cases the notice shall be served upon the clerk of the court in which the action is pending.

CHAPTER III.

HUSBAND AND WIFE, DOWER.

Section 130. Mutual obligations of husband and wife.
" *131. Rights of husband as head of family.*
" *132. Duties of husband to wife as to support.*
" *133. In other respects their interests separate.*
" *134. Husband and wife may make contracts.*
" *135. How far may impair their legal obligations.*
" *136. Consideration for separation.*
" *137. May be joint tenants.*
" *138. Neither answerable for acts of other.*
" *139. Married women may prosecute actions.*
" *140. Separate property of wife.*
" *141. Inventory of separate property of wife.*
" *142. Record of same.*
" *143. Earnings and accumulations of wife.*
" *144. Same when separated.*
" *145. Work and labor of wife.*
" *146. Debts of wife contracted before marriage.*
" *147. Separate property of wife, how far liable.*
" *148. Dower.*
" *149. Mortgaged lands subject to dower.*
" *150. Dower subject to purchase merely.*
" *151. Dower in surplus under mortgage.*
" *152. Dower not to attach unless absolute title.*
" *153. Absent wife need not sign deed.*
" *154. Widow may elect.*
" *155. Renunciation and form of.*
" *156. Rights of widows when no issue.*
" *157. Rights of widows when lands exchanged.*
" *158. Widow's right in land aliened.*

Section 159. Ante-nuptial settlement, when a bar to dower.
" *160. Assent to marriage settlement.*
" *161. When dower may be assigned anew.*
" *162. Not suffer waste.*
" *163. Right to dower not affected by acts of husband.*
" *164. Support of wife.*
" *165. Husband not liable when abandoned by wife.*
" *166. When wife must support husband.*
" *167. Rights of husband, how governed.*
" *168. Marriage settlement, how executed.*
" *169. To be acknowledged and recorded.*
" *170. Effect of recording.*
" *171. Minors may make marriage settlement.*
" *172. May act as executrix.*
" *173. May sue and be sued.*
" *174. Liable for her own contracts.*
" *175. May make will.*
" *176. May make contracts.*
" *177. Tenantcy by courtesy not allowed.*

Sec. 130. Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

Sec. 131. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

Sec. 132. The husband must support himself and his wife out of his property or by his labor. If he is unable to do so, she must assist him as far as she is able.

Sec. 133. Neither husband nor wife has any interest in the property of the other, except as mentioned in the preceding section, but neither can be excluded from the other's dwelling.

Sec. 134. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the Title on Trusts.

Sec. 135. A husband and wife can not, by any contract with each other, alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

Sec. 136. The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in the last section.

Sec. 137. A husband and wife may hold real or personal property together, jointly or in common.

Sec. 138. Neither husband nor wife, as such, is answerable for the acts of the other.

Sec. 139. A married woman in her own name may prosecute actions for injuries to her reputation, person, property, and character, or for the enforcement of any legal or equitable right, and may in like manner defend any action brought against herself.

Sec. 140. All the property of the wife owned before her marriage and that acquired afterwards is her separate property. The wife may, without the consent of her husband, convey her separate property or execute a power of attorney for the conveyance thereof.

Sec. 141. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the county clerk of the county in which the parties reside.

Sec. 142. The filing of the inventory in the clerk's office is notice and *prima facie* evidence of the title of the wife.

Sec. 143. The earnings and accumulations of the wife are not liable for the debts of the husband.

Sec. 144. The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

Sec. 145. All work and labor performed by a married woman for a person other than her husband and children shall, unless there is a written agreement on her part to the contrary, be presumed to be performed on her separate account.

Sec. 146. The property of the husband is not liable for the debts of the wife contracted before marriage.

Sec. 147. The separate property of the wife shall be exempt from all debts and liabilities of the husband, unless for necessary articles procured for the use and benefit of herself and her children under the age of eighteen years, but such exemption shall extend only to such property of such wife as shall be mentioned in an inventory thereof, as provided in Sections 141 and 142. And in no case shall any of the separate property of the wife be liable for the debts of the husband, unless such property is in the sole and exclusive possession of the husband, and then only to such persons as deal with the husband in good faith on the credit of such property, without knowledge or notice that the property belongs to the wife. But the separate property of the wife is liable for her own debts, contracted before or after marriage.

Sec. 148. A widow shall be endowed of the third part of all lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form. When a wife joins with her husband in the execution of any conveyance of land, she thereby relinquishes her inchoate right, and shall not thereafter have dower therein, except in case of sale under mortgage signed and executed by herself and husband she shall have a right or dower in the surplus. Equitable estates shall be subject to the widow's dower, and all real estate of every description, contracted for by the husband during his lifetime, the title to which may be completed after his decease.

Sec. 149. Where a person seized of an estate of inheritance in land shall have executed a mortgage of such estate before or after marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgaee and those claiming under him.

Sec. 150. When a husband shall purchase lands during coverture, and shall mortgage such lands to secure the payment of the purchase money thereof, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

Sec. 151. When, in the cases specified in the two preceding sections, the mortgagee, or those claiming under him, shall, after the death of such husband, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of a judgment or decree of a court, and any surplus shall remain after the payment of the moneys due on such mortgage and the costs and charges of sale, such widow shall be entitled to the interest or income of one-third part of such surplus for life as her dower.

Sec. 152. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he shall have acquired an absolute estate during the marriage.

Sec. 153. Any married man residing and owning real property in this State, whose wife has never been in the State or Territory of Montana, can by deed, mortgage, or other conveyance, grant the full title to such property by his own signature, and the wife or widow shall have no dower interest in the property to which the title of the husband is so divested.

Sec. 154. Every devise or bequest shall bar a widow's dower in lands or her share in personal estate unless otherwise expressed in the will; but she may elect whether she will take such devise or bequest, or whether she will renounce the benefit of such devise or bequest, and take her dower in the lands and her share in the personal estate.

Sec. 155. When a woman is entitled to an election under this Chapter, she shall be deemed to have taken such devise, unless, within one year after the authentication or probate of the will, she shall deliver or transmit to the District Court of the proper county a written renunciation, which may be in the following form, to-wit: "I, A B, widow of C D, late of the county of ———, State of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the late will and testament of my said deceased husband, which has been exhibited and proved according to law, (or otherwise, as the case may be,) and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the District Court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

Sec. 156. If a husband die, leaving a widow, but no children, nor descendants of children, such widow may, if she elect, have, in lieu of her dower in the estate of which her husband died seized, whether the same shall have been assigned or not, absolutely and in her own right, as if she were sole, one-half of all the real estate which shall remain after the payment of all just debts and claims against the deceased husband; *Provided*, That, in case dower in such estate shall have been already assigned, she shall make such new election within two months after being notified of the payment of such claims and debts.

Sec. 157. If a husband seized of an estate of inheritance in lands, exchanges it for other lands, his widow shall not have dower of both, but shall make her election as hereinbefore provided, to be endowed of the lands given, or of those taken in exchange. And if such election be not evinced by the commencement of the proceedings for the recovery and assignment of her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands taken in exchange.

Sec. 158. When a widow is entitled to dower out of any lands aliened by her husband in his lifetime, and such lands have been enhanced in value after the alienation, such lands shall be estimated in setting out the widow's dower according to their value at the time when they were so aliened.

Sec. 159. A woman may be barred of her dower in all of the lands of her husband by a jointure settled on her with her assent before the marriage; *Provided*, Such jointure consists of a freehold estate in lands for the life of the wife, at least, to take effect in possession or profits immediate on the death of the husband.

Sec. 160. Such assent shall be expressed if the woman is of full age by her becoming a party to the conveyance by which it is settled; and if she is under age, by her joining with her father or guardian in such conveyance.

Sec. 161. If a woman is lawfully evicted of lands assigned to her as a dower or settled upon the jointure, or is deprived of the provisions made for her by will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure or other provision had not been made.

Sec. 162. No woman endowed of any lands shall commit or suffer waste on the same, but she shall maintain the houses and tenements with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

Sec. 163. No act, deed or conveyance, executed or performed by the husband, without the assent of his wife, evidenced by her acknowledgement thereof, in the manner required by law to pass the estates of married women, and no judgment or decree confessed by or recovered against him, and no laches, default, covin or crime of the husband, shall prejudice the rights of the wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

Sec. 164. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may in good faith supply her with articles necessary for her support, and recover the reasonable valuable thereof from the husband.

Sec. 165. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him by agreement, unless such support is stipulated in the agreement.

Sec. 166. The wife must support the husband when he has not deserted her, out of her separate property, when he has no separate property, and he is unable, from infirmity, to support himself.

Sec. 167. The property rights of the husband and wife are governed by this Chapter, unless there is a marriage settlement containing stipulations contrary thereto.

Sec. 168. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

Sec. 169. When such contract is acknowledged or proved, it must be recorded in the office of the county clerk of every county in which any real estate may be situated which is granted or affected by such contract.

Sec. 170. The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

Sec. 171. A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

Sec. 172. A married woman may be an executrix, administratrix, guardian, or trustee, and may bind herself and the estate she represents, without any act or assent on the part of her husband.

Sec. 173. A married woman may sue and be sued in the same manner as if she were sole.

Sec. 174. The contracts made by a married woman, in respect to her separate property, labor or services, shall not be binding upon her husband, nor render him nor his property liable therefor; but she and her separate property shall be liable on such contracts in the same manner as if she were sole.

Sec. 175. A married woman may make a will in the same manner and with the same effect as if she were sole, except that such will shall not, without the written consent of her husband, operate to deprive him of more than two-thirds of her real estate, or of more than two-thirds of her personal estate.

Sec. 176. A married woman may make contracts, oral or written, sealed or unsealed, and may waive or relinquish any right or interests in any real estate, either in person or by attorney in the same manner, to the same extent and with the like effect as if she were a single woman.

Sec. 177. No estate is allowed the husband as tenant by courtesy upon the death of his wife.

TITLE II.

PARENT AND CHILD.

Chapter I. By birth.
" II. By adoption.

CHAPTER I.

CHILDREN BY BIRTH.

Section 180. Legitimacy of children born in wedlock.
" 181. Legitimacy of children born out of wedlock.
" 182. Who may dispute the legitimacy of a child.
" 183. Obligations of parents for the support and education of their children.
" 184. Custody of legitimate child.
" 185. Husband and wife living separate, neither to have superior right to custody of children.
" 186. When husband or wife may bring action for the exclusive control of children. Decree in such cases.
" 187. Custody of illegitimate child.
" 188. Allowance to parent.
" 189. Parent cannot control the property of child.
" 190. Remedy for parental abuse.
" 191. When parental authority ceases.
" 192. Remedy when a parent dies without providing for the support of his child.

Section 193. Reciprocal duties of parents and children in maintaining each other.
" *194. When a parent is liable for necessaries supplied to a child.*
" *195. When a parent is not liable for support furnished his child.*
" *196. Husband not bound for the support of his wife's children by a former marriage.*
" *197. Compensation and support of adult child.*
" *198. Parent may relinquish services and custody of child.*
" *199. Wages of minors.*
" *200. Right of parent to determine the residence of child.*
" *201. Wife in certain cases may obtain custody of minor children.*
" *202. Child legitimized by marriage of parents.*

Sec. 180. All children born in wedlock are presumed to be legitimate.

Sec. 181. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

Sec. 182. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Sec. 183. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give is inadequate, the mother must assist him to the extent of her ability.

Sec. 184. The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, excepting the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto.

Sec. 185. The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

Sec. 186. Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage; and the court or judge may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

Sec. 187. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

Sec. 188. The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Sec. 189. The parent, as such, has no control over the property of the child.

Sec. 190. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the county commissioners of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

Sec. 191. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child.

2. Upon the marriage of the child; or,

3. Upon its attaining majority.

Sec. 192. If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the county commissioners of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

Sec. 193. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promises of an adult child to pay for necessaries previously furnished to such parent is binding.

Sec. 194. If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

Sec. 195. A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

Sec. 196. A husband is not bound to support his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent; and where such is the case, they are not liable to him for their support, nor he to them for their services.

Sec. 197. Where a child, after attaining majority, continues to serve and be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

Sec. 198. The parent, whether solvent or insolvent, may relinquish to the child the right, of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

Sec. 199. The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

Sec. 200. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

Sec. 201. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this State, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in Section 230.

Sec. 202. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

CHAPTER II.

ADOPTION.

Section 205. Child may be adopted.
" 206. Who may adopt.
" 207. Consent of wife necessary.
" 208. Consent of child's parents.
" 209. Consent of child.
" 210. Proceedings on adoption.
" 211. Judge's order.
" 212. Effect of adoption.
" 213. Effect on former relations of child.
" 214. Adoption of illegitimate child.
" 215. Adoption of deserted child.

Sec. 205. Any minor child may be adopted by any adult person in the cases and subject to the rules prescribed in this Chapter.

Sec. 206. The person adopting a child must be at least ten years older than the person adopted.

Sec. 207. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

Sec. 208. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, or desertion, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty, neglect or desertion.

Sec. 209. The consent of a child, if over the age of twelve years, is necessary to its adoption.

Sec. 210. The person adopting a child and the child adopted, and the other persons, if within or residents of this State, whose consent is necessary, must appear before the judge of the District Court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of the State, then their written consent, duly proved or acknowledged, according to Sections 990 and 991, of this Code, shall be filed in said District Court at the time of the application for adoption.

Sec. 211. The judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make out an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

Sec. 212. A child, when adopted, may take the family name of the person adopting. After adoption the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

Sec. 213. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards and all responsibility for the child so adopted, and have no right over it.

Sec. 214. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption.

Sec. 215. Whenever it is made to appear to the satisfaction of the District Court of any county, that any minor child has been deserted by its parents or surviving parent, and that it has no legal guardian, it shall be lawful, with the approval of the district judge, for any person desirous of adopting the said child, to adopt the same, according to law.

TITLE III.

GUARDIAN AND WARD.

Section 220. *Guardian, what.*
" 221. *Ward, what.*
" 222. *Kinds of guardian.*
" 223. *General guardian, what.*
" 224. *Special guardian, what.*
" 225. *Appointment by parent.*
" 226. *No person guardian of estate without appointment.*
" 227. *Appointment by court.*
" 228. *Same.*
" 229. *Jurisdiction.*
" 230. *Rules of awarding custody of minors.*
" 231. *Powers of guardian appointed by court.*
" 232. *Duties of guardian of the person.*
" 233. *Duties of guardian of estate.*
" 234. *Relation confidential.*
" 235. *Guardian under direction of court.*
" 236. *Death of a joint guardian.*
" 237. *Removal of guardian.*
" 238. *Guardian appointed by parent, how superseded.*
" 239. *Guardian appointed by court, how superseded.*
" 240. *Released by ward.*
" 241. *Guardian discharged.*

Sec. 220. A guardian is a person appointed to take care of the person or property of another.

Sec. 221. The person over whom or over whose property a guardian is appointed, is called a ward.

Sec. 222. Guardians are either:

1. General; or,
2. Special.

Sec. 223. A general guardian is a guardian of the person or of all the property of the ward within this State, or of both.

Sec. 224. Every other is a special guardian.

Sec. 225. A guardian of the person or property, or of both, of a child born, or likely to be born, may be nominated by will or deed, to take effect upon the death of the parent nominating:

1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent.
2. If the child be illegitimate, by the mother.

Sec. 226. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

Sec. 227. A guardian of the person or property, or both, of a person residing in this State, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in Section 225, by the District Court, as provided in the Code of Civil Procedure.

Sec. 228. A guardian of the property within this State of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the District Court.

Sec. 229. In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

Sec. 230. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interests of the child in respect to its temporal and its mental and moral welfare, and if the child be of sufficient age to form an intelligent preference, the court may consider that preference in determing the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

First—To a parent.

Second—To one who was indicated by the wishes of a deceased parent.

Third—To one who already stands in the position of a trustee of a fund to be applied to the child's support.

Fourth—To a relative.

Sec. 231. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

Sec. 232. A guardian of the person is charged with the custody of the ward, and must look to his support, health and education. He may fix the residence of the ward at any place within the State, but not elsewhere, without the permission of the court.

Sec. 233. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the District Court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the ward, and deliver it to the ward at the close of his guardianship, in as good condition as he received it.

Sec. 234. The relation of a guardian and ward is confidential, and is subject to the provisions of the Title on Trusts.

Sec. 235. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Sec. 236. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

Sec. 237. A guardian may be removed by the District Court for any of the following causes:

1. For abuse of his trust.
2. For continued failure to perform his duties.
3. For incapacity to perform his duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his duties.
6. For removal from the State.
7. In the case of the guardian of the property, for insolvency.
8. When it is no longer proper that the ward should be under guardianship.

Sec. 238. The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided in Section 237.
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority.

Sec. 239. The power of a guardian appointed by a court is superseded only:

1. By order of the court; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,
3. The guardianship over the person of the ward, by the marriage of the ward.

Sec. 240. After the ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Sec. 241. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

TITLE IV.

APPRENTICES.

Section 245. Minors may apprentice themselves.
" *246. Who to consent thereto.*
" *247. Executors may bind.*
" *248. Commissioners may bind.*
" *249. Age of apprentice to be inserted in indenture.*
" *250. Conditions in.*
" *251. Same.*
" *252. Deposit of indenture.*
" *253. Causes of annulling indenture.*
" *254. Indenture to be deposited with county clerk.*

Sec. 245. Every minor, with the consent of the persons or officers hereinafter mentioned, may of his own free will, bind himself, in writing, called an indenture of apprenticeship, to serve as clerk, apprentice or servant, in any profession, trade or employment, until his majority, or for any stated time, and such binding shall be as valid and effectual as if such minor was of full age at the time of making the engagement.

Sec. 246. Consent to an indenture of apprenticeship must be given by a certificate at the end thereof, or indorsed thereon, signed:

1. By the father and mother of the apprentice.
2. If the father lacks capacity to consent, or has abandoned or neglected to provide for his family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the town, then by the mother.
3. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor.
4. If the mother is dead, or lacks capacity to consent, then by the father.
5. If there is no parent of capacity to consent, and no such executor, then by the guardian; or,
6. If there is no such parent, executor, or guardian, then by the county commissioners of the county, or by any two justices of the peace of the town, or by the district judge.

Sec. 247. The executors of any last will of a parent who shall be directed in such will to bring up his or her child to some trade or calling, may bind such child to service as a clerk, or apprentice, in like manner as the father might have done if living. If there is a surviving mother, her consent also is necessary.

Sec. 248. The county commissioners may bind out minors who are or shall become chargeable to such county, to be clerks, apprentices or servants, which binding shall be as effectual as if such minors had bound themselves with the consent of their father and mother.

Sec. 249. The age of every infant so bound shall be inserted in the indentures, and shall be presumed to be the true age; and whenever public officers are authorized to execute any indentures, or their consent is required to the validity of the same, it shall be their duty to inform themselves fully of the infant's age.

Sec. 250. Every sum of money paid or agreed for, with or in relation to the binding out of any clerk, apprentice or servant, shall be inserted in the indenture.

Sec. 251. The indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture.

Sec. 252. The counterpart of any indenture executed by any county, or city, or town officers, must be by them deposited in the office of the county clerk.

Sec. 253. Such indenture of apprenticeship may be annulled for:

1. Fraud in the contract of indenture.

2. When such contract is not made or executed in accordance with the provisions of this Title.

3. For willful non-fulfillment, by such master, of the provisions of such indenture.

4. Cruelty or maltreatment of such apprentice by the master. In such case the apprentice may recover for his services.

Sec. 254. In no case shall a minor be bound by an indenture until a duplicate thereof shall have been deposited in the office of the county clerk for the benefit of the minor.

PART IV.

CORPORATIONS.

Title I. General provisions as to all corporations.
“ *II. Banks and banking corporations.*
“ *III. Trust deposit and security and savings bank corporations.*
“ *IV. Stock and mutual insurance corporations.*
“ *V. Institutions of learning corporations.*
“ *VI. Building corporations.*
“ *VII. Building and loan corporations.*
“ *VIII. Religious, benevolent, and other like corporations.*
“ *IX. Railroad corporations.*
“ *X. Telegraph and telephone corporations.*
“ *XI. Mining corporations.*
“ *XII. Foreign corporations.*

TITLE I.

GENERAL PROVISIONS APPLICABLE TO ALL CORPORATIONS.

Chapter I. Formation of corporations.
“ *II. Corporate stock.*
“ *III. Corporate powers.*
“ *IV. Extinction and dissolution of corporations.*

CHAPTER I.

FORMATION OF CORPORATIONS.

ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

Section 260. Corporation defined.
“ *261. What are public and what private corporations.*

Section 262. Corporations, how formed.
" *263. For what purpose private corporations are formed.*
" *264. Reservation of power to repeal.*
" *265. Corporate existence cannot be questioned.*
" *266. Name.*
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" *268. Existing corporations not affected.*
" *269. Name of instrument creating corporation.*
" *270. Articles of incorporation, what to contain.*
" *271. Certain corporations to state further facts in articles.*
" *272. Three or more persons to sign and acknowledge articles.*
" *273. Articles to be filed with county clerk and Secretary of State. Term of existence.*
" *274. Certified copy of articles prima facie evidence.*
" *275. Who are members and who are stockholders of corporations.*
" *276. Filing articles of incorporation.*
" *277. Stock issued for purchase of property.*

Sec. 260. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

Sec. 261. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State; all other corporations are private.

Sec. 262. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this Article.

Sec. 263. The purposes for which the private corporations mentioned in the last section are:

1. The support of public worship.

2. The support of any religious, benevolent, charitable, educational or missionary undertaking.

3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts.

4. The encouragement of agriculture and horticulture.

5. The maintenance of public parks, and of facilities for skating and other innocent sports.

6. The maintenance of a club for social enjoyment.

7. The maintenance of a public or private cemetery.

8. The prevention and punishment of theft or willful injuries to property and insurance against such risks.

9. The insurance of human life, dealing in annuities, and the insurance of fidelity of persons holding places of public or private trust.

10. The insurance of human beings against sickness or personal injury.

11. The insurance of the lives of domestic animals or their loss or damage.

12. The insurance of property against marine risks.

13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation.

14. The transaction of any banking business or trust deposit and security business, and the insurance of the safe keeping of all kinds of personal property.

15. The construction and maintenance of a railroad and of a telegraph line in connection therewith and a street railroad of any kind.

16. The construction and maintenance of any other species of roads, and of bridges in connection therewith.

17. The construction and maintenance of a bridge.

18. The construction and maintenance of a telegraph line, telephone or electric light line.

19. The establishment and maintenance of a line of stages.

20. The establishment and maintenance of a ferry.

21. The carriage of property and persons by express.

22. The building and navigation of steamboats and carriage of persons and property thereon.

23. The supply of water to the public.

24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.

25. The transaction of any manufacturing, mining, mechanical or chemical business.

26. The transaction of a printing and publishing business.

27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate.

28. The establishment and maintenance of a hotel.

29. The improvement of the breed of domestic animals by importation, sale or otherwise.

30. The transaction of the business of raising, buying and selling cattle, horses and sheep: or,

31. The construction of canals, ditches, flumes and other works for conveying water and reservoirs for storing the same, and the boring of artesian wells.

No corporation must be formed for any other purposes than those mentioned in this section, and all corporations heretofore formed and now existing, except for the purposes mentioned in this section, are dissolved, and the directors thereof are required to immediately settle all matters connected therewith, and in case of their failing so to do the Attorney General must proceed against such corporations as provided in the Code of Civil Procedure, Title X., Chapter V.

Sec. 264. Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the Legislative Assembly.

Sec. 265. One who assumes an obligation to an ostensible corporation, as such, can not resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

Sec. 266. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the name is to be deemed so for matter of description, that a mistake in the name in any instrument may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.

Sec. 267. Any corporation formed under the laws of the Territory or State of Montana, except those dissolved by the provisions of Section 263, and still existing, may at any time within the period limited for its duration elect to continue its existence under the provisions of this Code applicable thereto. Such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the Secretary of State; and thereafter the corporation shall continue its existence under the provisions of this Code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby.

Sec. 268. No corporation formed or existing before twelve o'clock noon, upon the day which this Code takes effect, is affected by the provistons of Part IV., of Division First, of this Code, unless such corporation elects to continue its existence under it as provided in Section 267; but the laws under which such corporations are formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

Sec. 269. The instrument by which a private corporation is formed is called "Articles of Incorporation."

Sec. 270. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation.

2. The purpose for which it is formed.

3. The place where its principal business is to be transacted.

4. The term for which it is to exist, not exceeding twenty years.

5. The number of its directors or trustees, which shall not be less than three nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.

6. The amount of its capital stock, and the number of shares into which it is divided.

7. If there is a capital stock the amount actually subscribed, and by whom.

8. If the stock is assessable it must be so stated.

Sec. 271. The articles of incorporation in the following cases must also state:

1. In case of assessment life insurance corporations, the articles of incorporation shall state as provided in Sections 463 and 464, of this Code.

2. And in articles of incorporation of institutions of learning, shall state as provided in Section 482, of this Code.

3. And in case of building and loan associations the corporation shall be formed as provided in Sections 500 to 506, inclusive, of this Code.

4. In case of religious, benevolent and other like incorporations, the articles of incorporation shall state as provided in Section 527, of this Code.

5. Articles of incorporation of any railroad company shall also state the names of the counties, States, territories and countries where the termini of said road are to be located, and those through which said road shall pass, and the general route of said road, also the amount of capital stock necessary to construct the same.

6. In the case of the formation of corporations for the construction of ditches and flumes, the articles of incorporation must also state the stream or streams from which the water is to be taken, the point or place on said stream at or near which the water is to be taken out, the line of the ditch or flume, and the use to which the water is to be applied.

7. In case of tunnel corporations, the articles of incorporation shall also state the place where said tunnel is to be run, the termini, its course, and the minerals or ore designed to be excavated.

8. In the case of telegraph or telephone companies, the articles of incorporation shall also state the termini of such line or lines, and the counties through which they shall pass.

Sec. 272. The articles of incorporation must be subscribed by three or more persons, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

Sec. 273. Upon filing and recording the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the Secretary of State, the secretary must issue to the corporation, over the great seal of the State, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the certificate, and for the term of twenty years, unless it is in the articles of incorporation otherwise stated, or in this Code otherwise specially provided; and in no case must such term exceed twenty years.

Sec. 274. A copy of any articles of incoporation filed in pursuance of this Chapter, and certified by the Secretary of State, must be received in all the courts and other places as *prima facie* evidence of the facts therein stated.

Sec. 275. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

Sec. 276. No corporation hereafter formed shall purchase, locate, or hold property in any county in this State, without filing a copy of the copy of its articles of incorporation filed in the office of the Secretary of State, duly certified by such Secretary of State, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this Code or not, must, within ninety days after the passage of this Code, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this State in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquire any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks and certified copies thereof shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits until such articles of incorporation, and such certified copy of its articles of incorporation shall be filed at the places directed by the general law and this section; *Provided*, That all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and provided further, that the said damages may be recovered in an action brought in any court of this State of competent jurisdiction, by any party or parties suffering the same.

Sec. 277. The directors of any corporation may purchase mines, manufactories and other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further call; neither shall the holders thereof be liable for any further payments under the provisions of Section 306, of this Code; but in all statements and reports of the corporation to be published, this stock shall not be stated or reported as being issued for cash paid into the corporation, but shall be reported, in this respect, according to the facts.

ARTICLE II.

BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS.

Section 278. Adoption of by-laws, when, how, and by whom.
“ *279. Directors, election of.*
“ *280. By-laws, may provide for what.*
“ *281. By-laws recorded and how amended.*
“ *282. How many and who to be directors.*
“ *283. Directors must be elected and by-laws adopted at first meeting.*
“ *284. Election, how conducted.*
“ *285. Organization of board of directors, etc.*
“ *286. Dividends to be made from surplus profits.*
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“ *294. Meeting by consent valid.*
“ *295. Proceedings at meeting to be binding.*
“ *296. Meetings, when held.*
“ *297. Special meeting, how called.*
“ *298. How corporation may change place of business.*
“ *299. Report of directors.*
“ *300. Payment for subscribed stock.*

Sec. 278. Every corporation formed under this Title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government, not inconsistent with the Constitution and laws of this State. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

Sec. 279. The directors must be elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in Section 278.

Sec. 280. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The mode of voting by proxy.
4. The time of the annual election of directors, and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

Sec. 281. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "Book of By-Laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members, if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws, with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written consent was filed, shall be stated in said book, and until so stated the repeal shall not take effect.

Sec. 282. The corporate powers, business and property of all corporations formed under this Title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen directors, to be elected from among the holders of stock, or, where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

Sec. 283. At the meeting at which the by-laws are adopted or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified.

Sec. 284. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in Section 289, of this Code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case the directors receiving the highest number of votes shall be declared elected.

Sec. 285. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

Sec. 286. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large in the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Sec. 287. No director shall be removed from office unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in Section 278, of this Title, unless other express provision has been made therefor in the by-laws. In case of removal the vacancy may be filled by election at the same meeting.

Sec. 288. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members directing him to call a meeting of the corporation by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

Sec. 289. At all elections or votes had for any purpose there-must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representative, must be a member thereof or a *bona fide* stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this Article is voidable at the instance of any stockholders or members, and may be set aside by petition to the District Court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of the proceedings of the board of directors.

Sec. 290. The shares of stock of an estate of a minor, or person of unsound mind, may be represented by his guardian, and of a deceased person by his executor or administrator.

Sec. 291. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in Section 287, of this Article.

Sec. 292. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the District Court of the district in which such election was held, or a judge thereof, must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party or those to be affected thereby.

Sec. 293. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

Sec. 294. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the acts and proceedings of such meeting are as valid as if had at a meeting legally called and noticed.

Sec. 295. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

Sec. 296. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

Sec. 297. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there is none, on the order of two directors.

Sec. 298. Every corporation that has been or may be created under the general laws of this State, may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this State. Before such change is made, the consent in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published at least once a week, for three successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it.

Sec. 299. Every corporation shall semi-annually, within twenty days from the first days of January and July, make report, which shall be published in some newspaper of the town, city, or village, or if there be no newspaper published therein, then in some newspaper published nearest the principal place of business of such corporation, which shall state the amount of capital and of the proportion actually paid in and the amount of existing debts, which report shall be signed by the president and a majority of the directors, and shall be verified by the oath of the president or secretary of said corporation, and filed in the office of the clerk of the county where the principal business of the corporation shall be carried on, and if said corporation shall fail to do so, all the directors of the corporation shall be jointly and severally liable for all debts of the corporation then existing, and for all that shall be contracted before such report shall be made.

Sec. 300. It shall be lawful for the directors to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the directors shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

CHAPTER II.

CORPORATE STOCK.

ARTICLE I.

STOCK AND STOCKHOLDERS.

Section 306. Liability of stockholders.
" *307. Certificates, how and when issued.*
" *308. Transfer of shares.*
" *309. Same by married woman, and dividends.*
" *310. Non-resident stockholders, and bonds.*
" *311. Five per cent. of stock may demand statement.*
" *312. Loan to stockholders.*

Sec. 306. The stockholders of every corporation shall be severally and individually liable to the creditors of the corporation in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts and contracts made by such corporation, until the whole amount of capital stock subscribed for shall have been paid in.

Sec. 307. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

Sec. 308. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the owner, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid, except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

Sec. 309. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent, or attorney, without the signature of her husband, in the same manner as if such married woman were a *feme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman, touching any shares of stock of any corporation owned by her is valid and binding without the signature of her husband, the same as if she were unmarried.

Sec. 310. When the shares of stock in a corporation are owned by persons residing out of the State, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or, if not so satisfactory, then one approved by the judge of the District Court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

Sec. 311. Whenever any person or persons owning five per cent. of the capital stock of any corporation, shall present a written request to the treasurer thereof that they desire a statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this Chapter, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

Sec. 312. No loan of money shall be made by any corporation to any stockholder therein, and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned.

ARTICLE II.

ASSESSMENT OF STOCK.

Section 315. Directors may levy assessment.
" 316. Limitation.
" 317. Levy of assessment, unpaid assessment.
" 318. Contents of order for assessment.
" 319. Notice of assessment, form.
" 320. Publication and service.
" 321. Delinquent notice, form.
" 322. Contents of notice.
" 323. How published.
" 324. Jurisdiction acquired, how.
" 325. Sale to be at public auction.
" 326. Highest bidder to be purchaser.
" 327. Corporation may purchase in default of bidder.
" 328. Disposition of stock purchased by corporation.
" 329. Extension of time of delinquent sale.
" 330. Assessment shall not be invalidated.
" 331. Action for recovery of stock, limitation.
" 332. Affidavits to be filed.
" 333. Waiver of sale.
" 334. To what corporations applicable.
" 335. Other corporations may make stock assessable.

Sec. 315. The directors of any corporation formed or existing under the laws of this State may, for the purposes of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, [illegible] and to the extent provided [illegible] [illegible]

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of Section 316.

Sec. 318. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable, fix a day subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

Sec. 319. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

Sec. 320. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent within ten days after the assessment through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are [illegible]

[illegible]

[illegible] upon the following [illegible] stock, on account of assessment levied on the (date) [illegible] assessments levied previous thereto, if any, the several amounts set opposite the names of respective shareholders as follows. (Names, number of certificate, number of shares, amounts.) and in accordance with law (and an order of the board of directors, made on the (date), if any such order shall have been made), so many shares of each parcel of stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

Sec. 322. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

Sec. 323. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

Sec. 324. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

Sec. 325. On the day, at the place, and at the time appointed in the notice of sale the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

Sec. 326. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock pur-

[illegible]

[illegible] If at the sale of stock no bidder offers the [illegible] of the assessments and costs and charges due, the [illegible] be bid in and purchased by the corporation through the president, secretary, or any director thereof, at the amount of the assessments, costs and charges due: and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

Sec. 328. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Sec. 329. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the coporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Sec. 330. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must begin anew.

Sec. 331. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

Sec. 332. The publication of notice required by this Article must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are *prima facie* evidence of the facts therein stated. Certificates signed by the secretary, and under the seal of the corporation, are *prima facie* evidence of the contents thereof.

Sec. 333. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this Chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

Sec. 334. The provisions of this Article only apply to such corporations whose articles of incorporation set forth the fact that the stock of such corporation is assessable.

Sec. 335. Any corporation whose capital stock is not assessable may, with the consent of three-fourths of its stockholders, in writing, spread upon the records of such corporation, make its stock assessable under the provisions of this Article. The board of directors of any corporation, where such corporation desires to avail itself of the provisions of this Article, shall file and have recorded in the office of the Secretary of State, and of the county clerk of the county where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock of such corporation has been made assessable, and thereafter, the stock of such corporation shall be liable to assessments, as provided in this Article.

CHAPTER III.

CORPORATE POWERS.

Article I. General powers.
" II. Records.
" III. Examination of corporation.

ARTICLE I.

GENERAL POWERS.

Section 340. Powers of corporations.
" 341. Limitation of powers.

Section 342. Issuing bills prohibited.
" *343. Corporations to organize within one year.*
" *344. Consolidation not to make foreign corporation.*
" *345. Decrease or increase of stock or extending business, how.*
" *346. May acquire real property, how much.*
" *347. Consolidation of mining corporations.*

Sec. 340. Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.

2. To sue and be sued, in any court.

3. To make and use a common seal, and alter the same at pleasure.

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

Sec. 341. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

Sec. 342. No corporation shall create or issue bills, notes, or other evidence of debt, upon loans or otherwise, for circulation as money.

Sec. 343. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this Part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such *de facto* corporation may be a party; but such inquiry may be had at the suit of the State on information of the Attorney General.

Sec. 344. If any railroad, telegraph, telephone, express, or other corporation or company organized under any of the laws of this State, shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express or other corporation organized under any of the laws of any other State or Territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters that may arise as if said consolidation had not taken place.

Sec. 345. No corporation shall issue stocks or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. Every corporation may increase or diminish its capital stock, or create or increase its bonded indebtedness, or extend or change its business, subject to the foregoing provision of this section, at a meeting called by the directors for the purpose, as follows:

1. Notice of the time and the place of the meeting, stating its object and the amount to which it is proposed to increase or diminish the capital stock and the extension or change proposed in its business, must be personally served on each stockholder resident in the State, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business once a week for six weeks successively.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase, diminution, extension or change, before it can be effectual.

4. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, or the extension or change of business provided for, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the Secretary of State, and thereupon the capital shall be so increased or diminished, or the business so extended or changed, or the bonded indebtedness may be increased accordingly.

Sec. 346. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property as provided in the Code of Civil Procedure, Title VII., Part III.

Sec. 347. It is lawful for two or more corporations formed under the laws of Montana Territory or of this State, or that may hereafter be formed, under the laws of this State, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors of such corporations so desiring to consolidate their interests; but no such consolidation must take place without the consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation relieves such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county and State where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporations shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, must be filed in the office of the county clerk of the county in which the original articles of incorporation of any of said corporations are filed, and a copy thereof filed in the office of the Secretary of State: such certificate must be signed by a majority of each board of directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of directors for the consolidated corporation, for the year thence next ensuing. The said certificate must also contain all the requirements prescribed by Section 270, of this Code. This section applies to all corporations formed under the laws of this State, or Territory of Montana whether formed under this Code or prior thereto.

ARTICLE II.

RECORDS.

Section 352. Records of what, and how kept.
" *353. Other records to be kept by corporations for profit, and others.*

Sec. 352. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member or stockholder, to any action or porposed action must be entered in full; and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation.

Sec. 353. In addtion to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; installments paid or unpaid: assessments levied, and paid and unpaid, a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor.

ARTICLE III.

EXAMINATION OF CORPORATIONS, ETC.

Section 355. Examination into affairs of corporation, how made by officers of State.
" *356. Examination made by the Legislative Assembly.*
" *357. Chapter and Article may be repealed.*

Sec. 355. The Attorney General or county attorney, whenever and as often as required by the Governor, must examine into the affairs and condition of any corporation in this State, and report such examination, in writing, together with a detailed statement of facts, to the Governor, who must lay the same before the Legislative Assembly: and for that purpose the Attorney General or county attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine all the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition.

Sec. 356. The Legislative Assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this State at all times; and for that purpose, any committee appointed by the Legislative Assembly or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

Sec. 357. The Legislative Assembly may at any time amend or repeal this Part, or any Title, Chapter, Article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders, or officers, for any liability which has been previously incurred.

CHAPTER IV.

EXTENSION AND DISSOLUTION OF CORPORATIONS.

Section 360. Proceedings to disincorporate.
" *361. On dissolution, directors to be trustees for creditors.*
" *362. Any corporation may extend its corporate existence, how.*
" *363. Title I. to apply to all corporations with certain exceptions.*

Sec. 360. A corporation is dissolved:

1. By the expiration of the time limited by its charter; or,
2. By a judgment of dissolution, in the manner provided by the Code of Civil Procedure, Title VI., Part III., and Chapter V., of Title X., Part II.
3. By an act of the Legislative Assembly.

Sec. 361. Unless other persons are appointed by the court, the directors of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and as such trustees are authorized to execute all grants of real estate owned by such corporation.

Sec. 362. Every corporation formed for a period less than twenty years may at any time prior to the expiration of the term of its corporate existence extend such term to a period not exceeding twenty years from its formation. And every corporation may extend the period of its existence for an additional term not exceeding twenty years, after the expiration of the period for which it was formed, as follows: Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock, or by two-thirds of the members, or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the Secretary of State, and thereupon the term of the corporation shall be extended for the specified period.

Sec. 363. The provisions of this Title are applicable to every coporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this Title, in which case the special provision prevails.

TITLE II.

BANKS AND BANKING CORPORATIONS.

Section 370. Incorporation of bank of discount and deposit.
" *371. Bank not to purchase its own stock, exception.*
" *372. Powers.*
" *373. Directors.*
" *374. Transfer of stock.*
" *375. Purchase of real estate.*
" *376. Conveyance of real estate.*
" *377. Dividends.*
" *378. Liability of stockholders.*
" *379. Dividends from net earnings.*
" *380. Book containing name of stockholders.*
" *381. Increase of capital stock.*
" *382. Forfeiture of franchise.*
" *383. Limit of liability.*
" *384. To keep twenty per cent. of its immediate liabilities in available funds.*
" *385. Taxation.*

Sec. 370. Any number of persons, not less than three nor more than thirteen, may associate together to establish a bank of discount and deposit, and become incorporated upon the terms and conditions, and subject to the liabilities prescribed in this Title, but the aggregate of the amount of the capital stock of any such corporation shall not be less than twenty thousand dollars. No bank organized under the provisions of this Title shall transact any business until its capital stock has been paid into the treasury of such bank in cash, and until a certificate to that effect under oath of the president and cashier is filed in the office of the State Auditor, and in the office of the county clerk in the county where such bank is located, nor must any such bank transact any business except as is incidental and necessarily preliminary to its organization until it has been authorized by the State Auditor to commence the business of banking, which authorization shall be a certificate under his hand and official seal, that such bank has complied with the provisions of this Title and is authorized to commence the business of banking. The bank shall cause the certificate and authorization of the State Auditor to be published in some newspaper published in the town or county where the corporation is located, for at least four insertions immediately after the issuing thereof.

Sec. 371. The name of such bank to be used in all its dealings, must not be that of any other incorporated bank in the State. No private bank must use any corporate name, and no bank must be the holder or purchaser of any portion of its own stock or of the capital stock of any other incorporated company unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, on security, which at the time was deemed adequate to insure the payment of such debt, independent of any lien upon such stock; and stock so purchased must in no case be held by the bank so purchasing for a longer period of time than six months, if the same can be sold for what the stock cost, or at par.

Sec. 372. Such bank when so organized has power to carry on the business of banking by discounting on banking principles upon such securities as the directors or trustees deem expedient, by receiving deposits; by buying or selling the bonds or stocks of this State or any other State or Territory of the United States; also the bonds of any county, city, town or school district in this State legally authorized to issue such bonds; gold and silver bullion; foreign coins and bills of exchange; by loaning money on real and personal security, and by exercising such incidental powers as may be necessary to carry on such corporation or business.

Sec. 373. The stockholders must elect from their number not to exceed thirteen directors, who may choose from their number a president and vice-president, and appoint a cashier, teller, and such other officers and agents as their business may require, and remove such officers at their pleasure, and appoint others. The first directors hold their office until the first Monday in January next after their election or appointment, and until their successors are elected and qualified, and all subsequent elections must be held on the first Monday in January of each year. The directors are authorized to adopt such by-laws not in conflict with this Part as may be necessary. The directors must be citizens of the United States, and at least three-fourths of them must be residents of the State. Every director must own in his own right at least ten shares of the capital stock of the bank, and any director who ceases to be the owner of at least ten shares or who becomes in any other manner disqualified, thereupon ceases to be a director, and his place must be filled until the next election by the directors. Each director, when appointed or elected, must take an oath that he will, so far as the duties devolve upon him, diligently and honestly administer the affairs of such bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this Title.

Sec. 374. No transfer of stock of any bank formed under this Title, is valid as against the bank so long as the registered holder thereof shall be liable as principal debtor, surety or otherwise to the corporation for any debts which shall be due and unpaid, nor in such case must any dividend, interests or profits be paid on such shares so long as such liabilities continue, but all such dividends, interests and profits must be retained by the bank and applied to the discharge of such liabilities; and no stock must be transferred upon the books of any bank without the consent of a majority of the directors while the registered holder is indebted to the bank, and if transferred the amount of the indebtedness shall be stated on the face of the stock certificate.

Sec. 375. It is lawful for any such corporation to purchase, hold, or convey real estate, as follows:

1. Such as is necessary for the proper transaction of business.
2. Such as is mortgaged to it in good faith by way of security for loans previously made by or moneys due to the corporation.
3. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its business.
4. Such as it purchases at sales under judgments, decrees, or mortgages held by the corporation.

Sec. 376. Every conveyance of real estate by such corporation must be authorized by the board of directors, and must be made by an instrument under the hand of the president, or vice president and cashier of said bank, with the seal of the corporation affixed thereto, and duly acknowledged by them.

Sec. 377. The directors of each bank semi-annually (or oftener as they may elect) on the first Mondays in January and July, must declare a dividend of so much of the net profits of the bank as they deem expedient, and on each of such days the president or cashier must make a full and accurate statement to the State Auditor of the condition of the bank, as it shall be on that day after declaring the dividend (if any be declared), which must be verified by the oath of the president or cashier, and attested by the signature of at least two of the directors, and must contain a full abstract of the general accounts of the bank, so as to show plainly its resources and liabilities, and the amount of each kind thereof; and the same shall be published once in some newspaper of the county where such bank is located, if any newspaper be published therein, and at the expense of the bank; and the proof of such publication shall be furnished said State Auditor. If any such banking corporation neglects to make out and transmit the statement required in this section for one month beyond the period when the same is required to be made, or willfully violates any of the provisions of this Title, the directors shall be personally liable for all debts of said corporation contracted previous to and during the period of such neglect, and shall be subject to a penalty of not less than one hundred dollars, nor more than five hundred dollars, for such neglect.

Sec. 378. The officers and stockholders of every banking corporation formed under the provisions of this Title are individually liable for all debts contracted during the term of their being officers or stockholders of such corporation equally and rateably to the extent of their respective shares of stock in any such corporation, except that when any stockholder shall sell and transfer his stock such liability shall cease at the expiration of six months from and after the date of such sale and transfer.

Sec. 379. No banking corporation shall declare any dividend except from the net earnings after deducting all losses.

Sec. 380. Every corporation doing a banking business in this State must keep in its office, in a place accessible to the stockholders, depositors, and creditors, thereof, and for their use, a book, containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary, showing:

1. The names of the directors of such corporation.

2. The number and value of shares of stock held by each director. The entries on such book, and such notice, shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations, formed or existing before twelve o'clock, noon, of the day on which this Code takes effect, as well as to those formed after such time.

Sec. 381. It is lawful for any corporation organized under the provisions of this Title, by their by-laws to provide for an increase of their capital stock, but no such increase shall be valid until the whole amount of such increase is paid in cash, and such payment certified under oath by the president or cashier to the State Auditor, who shall give his certificate specifying the amount of such increase, with his approval thereof, and that it has been duly paid in as a part of the capital of such bank.

Sec. 382. Every bank organized under the provisions of this Title which refuses or neglects to comply with the requirements lawfully made upon it for the period of sixty days after demand, shall be deemed to have forfeited its franchise; and any failure on the part of such bank to comply with, or any violation of the provisions of this Title, shall work a forfeiture of its franchise; and in either case the Attorney General, or the county attorney of the county in which the bank is located, upon demand of the State Auditor, shall commence an action for the purpose of annulling the existence of said corporation.

Sec. 383. The total liability to any bank incorporated under the provisions of this Title of any person or any company, corporation or firm, for money borrowed, including in the liabilities of a company or firm, the liabilities of the several members thereof, shall at no time exceed fifteen per cent. of the aggregate amount of the capital stock of such corportion actually paid in and of the permanent surplus fund of such bank; but the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or busines paper, actually owned by the person negotiating the same, shall not be considered as money borrowed.

Sec. 384. Each bank organized under the provisions of this Title must at all times have on hand in available funds, an amount equal at least to twenty per centum of all its immediate liabilities; one-half of this amount of available fund may consist of balances due the bank from solvent banks, and one-half of such sum shall be held in reserve as cash in hand. Immediate liabilities shall include all deposits due to individuals, firms or corporations, or to banks, and all items in the nature of claims payable on demand. In cash on hand shall be counted specie, legal tender notes, and all bills of solvent banks. Whenever the available funds of any bank shall be below twenty per centum of its immediate liabilities such corporation shall not increase its liabilities by making any new loans or discounts, otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividends of its profits until the required ratio between its immediate liabilities and its available funds has been restored.

Sec. 385. Banks incorporated under the provisions of this Title shall be taxed as national banks are, the stock to pay its share of the revenue, whether held in the State or not.

TITLE III.

TRUST DEPOSIT AND SECURITY, AND SAVINGS BANK CORPORATIONS.

CHAPTER I.

TRUST DEPOSIT AND SECURITY CORPORATIONS.

Section 390. Number of corporators.
" *391. Capital stock. Shall begin business, when.*
" *392. First meeting.*
" *393. Directors.*
" *394. Powers.*
" *395. What property may be held.*
" *396. May call in remainder of stock.*
" *397. Investment of capital.*
" *398. Money or property payable or returnable on demand, unless time specified.*
" *399. Insurance on mortgaged property.*
" *400. Transfer of stock.*
" *401. Liability of stockholders.*

Sec. 390. Any number of persons not less than three may associate together to form a corporation for the purpose of carrying on a trust deposit, security and loaning business, and with powers herein conferred.

Sec. 391. The amount of capital stock of any such corporation shall be fixed and limited by the corporators in their articles of incorporation, and shall not be less than one hundred thousand dollars nor more than five hundred thousand dollars, and shall be divided into shares of the par value of one hundred dollars each. When one hundred thousand dollars of stock shall have been subscribed for and the amount paid in cash, such corporation may proceed to business under this Chapter. The capital stock of any corporation organized under this Chapter may be increased by a vote of the stockholders at any meeting called for that purpose to any sum not exceeding five hundred thousand dollars. Any corporation organized under the provisions of this Chapter may qualify and proceed to business within ninety days after filing articles of incorporation, and if it fails to do so its articles of incorporation shall be null and void.

Sec. 392. When any corporation is formed under this Chapter any two of those associated may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published at the place where the principal office for the transaction of business is to be located, at least five days before the time appointed for such meeting; but no notice is necessary if all the subscribers to the capital stock unite in a call for such meeting in writing.

Sec. 393. The affairs of such corporation must be managed by not less than three directors, to be elected by the stockholders, and to hold their offices for the term of one year, and until their successors shall be duly chosen; said directors must choose one of their number president, and a majority of them convened according to the by-laws constitutes a quorum for the transaction of business; said directors have power to fill any vacancy which may happen in their board for the current year, and they may elect or appoint such other officers as they may deem expedient.

Sec. 394. Any corporation organized under this Chapter has power, in and by its corporate name, to receive money from any person or persons, corporation or company, on deposit, at such rate of interest and for such time as may be agreed upon, for the purpose of loaning and investing the same, and to accept and execute any trust which may be created by instruments in writing appointing such corporation trustee for any lawful purpose, and to act as such trustee in all matters embraced in such trust; to take and receive from any individual or corporation on deposit for safe keeping and storage, gold and silver plate, jewelry, money, stocks, securities and other personal property, and may have power to collect coupons, interest and dividends, on said above described securities, and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon.

Sec. 395. It is lawful for any such corporation to lease, purchase, hold and convey, all such real or personal property as may be necessary to carry on its authorized business, as well as such real or personal property as it may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions: execute and issue in the transaction of its business all necessary receipts, certificates and contracts, which shall be signed by such person or persons as may be designated by the by-laws of such corporation.

Sec. 396. The directors of any such corporation may call in the remainder of the capital stock not paid in when the corporation is formed, in such installments and at such times and places as they may deem proper, by giving notice thereof as the by-laws prescribe; and in case any stockholder neglects or refuses payment of any such installment for the space of sixty days after the same becomes due and payable, and after he has been notified thereof, the stock of such delinquent stockholder may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice by publication in some newspaper published at the place where the principal office for the transaction of business of such corporation is located.

Sec. 397. The board of directors of any such corporation are hereby authorized to invest the capital of said corporation and keep the same invested in good securities; and it is lawful for said corporation to make such investments of its capital and the funds accumulated by its business, including money deposits, or any part thereof, in notes or bonds and mortgages on unincumbered real estate, within the State of Montana, and also on any and all stocks or bonds of this State, or any other State or territory of the United States, or the bonds of any county, city, town, or school district, of this State, legally authorized to issue such bonds.

Sec. 398. All money or property deposited with such corporation is payable or returnable to the depositor on demand, unless a particular time has been agreed upon for its payment or return, in which case the terms of the agreement regulate the payment or return.

Sec. 399. Whenever buildings are included in the valuation of any real estate upon which a loan is made by any such corporation, they must be insured by the mortgagor in such company or companies, as the directors shall direct, and the policy of insurance shall be duly assigned or the loss made payable, as its interest may appear, to such corporation; and it is lawful for such corporation to renew such policy of insurance in the same, or in any other company or companies, as they may elect, from year to year, or for a longer or shorter term, in case the mortgagor neglects to do so, and may charge the amount paid to the mortgagor; and all the necessary charges and expenses paid by such corporation for such renewal or renewals must be paid by such mortgagor to such corporation, and it is a lien upon the property so mortgaged recoverable with interest from the time of payment as part of the moneys secured to be paid by such mortgage.

Sec. 400. The shares of the stock of the corporation established under this Chapter are personal property, and transferable on the books of such corporation in such manner as their by-laws prescribe.

Sec. 401. The stockholders of every corporation formed under this Chapter are individually liable for all debts contracted during the time of their being stockholders of such corporation, equally and ratably to the extent of their respective shares of stock in any such corporation held by them at the time such debts were contracted.

CHAPTER II.

SAVINGS BANK CORPORATIONS.

Section 406. Incorporation.
" *407. Capital stock.*
" *408. Directors and officers, election and qualification of.*
" *409. Majority of directors required to do business.*
" *410. Business.*
" *411. Deposits.*
" *412. Investment of capital stock.*
" *413. Officers not to borrow.*
" *414. Liability of officers and stockholders.*
" *415. Real estate, what may be held.*
" *416. Inspection of books, report.*
" *417. Contingent fund.*
" *418. Married women and minors, rights of.*
" *419. May deposit cash with other banks.*

Sec. 406. Any number of persons, not less than three, may associate themselves together under the provisions of this Chapter, and become incorporated as a savings bank, who shall, with their successors, constitute a body politic, and corporate under the name adopted by them in their articles of incorporation, provided no such corporation shall adopt a name previously adopted by any other corporation in this State.

Sec. 407. No corporation must be organized as a savings bank under the provisions of this Chapter with a capital stock of less than one hundred thousand dollars fully paid, in cash, prior to the reception of deposits by such bank, but such corporation may organize on a basis not exceeding five hundred thousand dollars capital stock, of which at least one hundred thousand dollars must be paid in before deposits are received, and the balance upon the call of the directors of such corporation within five years from the date of filing articles of incorporation, but not more than twenty-five per cent. of such unpaid capital must be called in during any one year, and all calls to be made upon thirty days' notice. Such capital must be held by the bank as a guarantee to its depositors to make make good any loss or depreciation of the funds of the corporation, and must be invested as hereinafter provided for the investment of the funds of such corporation. Each stockholder must receive a certificate of the portion of the capital stock owned by him, which must be transferable on the books of the corporation, and entitles the holder to participate in the profits of the corporation after the depositors have been paid such rates of interest as may be provided by the by-laws of the corporation, to such extent and in such manner as may be prescribed in the by-laws, and, at the dissolution of said corporation, to receive the proportionate amount of the profits which remains after the payment of the depositors.

Sec. 408. The stockholders must elect from their number not to exceed thirteen directors, who may choose from their number a president and vice president and appoint a cashier and teller and such other officers and agents as their business may require, and remove such officers at their pleasure, and appoint others. The first directors hold their office until the first Monday in January next after their election or appointment, and until their successors are elected and qualified, and all subsequent elections must be held on the first Monday of January of each year. The directors are authorized to adopt such by-laws not in conflict with this Title as may be necessary.

The directors must be citizens of the United States, and at least three-fourths of them must be residents of the State. Every director must own in his own right at least ten shares of the capital stock of the bank, and any director who ceases to be the owner of at least ten shares, or who becomes in any other manner disqualified, shall thereupon cease to be a director, and his place must be filled until the next election by the directors. Each director, when elected or appointed, must take an oath that he will, so far as the duties devolve upon him, diligently and honestly administer the affairs of such bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this Chapter.

Sec. 409. The affirmative vote of at least a majority of the members of the board of directors is required in making any order for or authorizing any investment of any money or the sale or transfer of any stock or securities, or other real or personal property belonging to the corporation, or the appointment of any officer receiving any salary therefrom.

Sec. 410. The business of such corporation is to receive on deposit such sums of money as may from time to time be offered therefor, for safe keeping or for investment, in accordance with the terms of this Chapter. Said corporation must receive on deposit all sums of money which may be offered for the purpose aforesaid, but every such corporation has the right to limit the aggregate amount which any one person or society may deposit to such sum as it may deem expedient to receive, and may refuse to receive any deposit, and at any time may return all or any part of any deposit.

Sec. 411. All deposits must be received by said corporation and returned to the depositors under such regulations as the board of directors from time to time prescribe, which regulations must be posted in some conspicuous place in a room where such corporation transacts its business and printed in all pass books delivered to its depositors.

Sec. 412. At least one-half of the capital paid in and one-half of the whole amount deposited, must be invested in bonds or other securities of the United States or any of the States or territories, of any county, city, town or school district of this State, on which interest is regularly paid; or loaned on unincumbered real estate, worth at least double the amount to be secured. The remainder may be invested in said bonds or loaned on the aforesaid securities or on approved personal security; but no loan must be made on personal security of less than two responsible persons or collateral security to be approved by the directors, but no loan upon personal security shall be made to any one person or copartnership, to an amount exceeding ten thousand dollars.

Sec. 413. No president, vice president, director, or other officer or servant of such corporation, shall directly or indirectly borrow any of the funds of such corporation or of its deposits, or in any manner use the same in their private affairs or business, nor shall any director receive any pay, salary or emolument, until after such interest as the directors shall have determined to allow depositors, shall be provided for in accordance with the regulations of the corporation.

Sec. 414. The officers and stockholders of every banking corporation formed under the provisions of this Chapter are individually liable for all debts contracted during the term of their being officers or stockholders of such corporation equally and ratably to the extent of their respective shares of stock in any such corporation, except that when any stockholder sells and transfers stock such liability ceases at the expiration of six months from and after the date of such sale and transfer.

Sec. 415. The real estate which such corporation may lawfully purchase, hold and convey, is:

1. Such as may be necessary for the proper transaction of its business, not exceeding in value one hundred and fifty thousand dollars.

2. Such as is mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this Chapter, or given as security for money loaned or advanced.

3. Such as is purchased at sale on judgment or decree obtained or rendered for money so loaned or advanced. And the said corporation must not purchase, hold or convey real estate in any other case or for any other purpose. And said corporation shall not buy or sell any personal property, except such as may be necessary for the proper transaction of its business, or such as may have been pledged, mortgaged or assigned to it, to secure moneys loaned or advanced.

Sec. 416. The books of said corporation must at all times during its hours of business be open for inspection and examination to the State Auditor, or such other person or persons as the Legislative Assembly or the State Auditor designates or appoints as agent for this purpose. Every corporation must make a report of its condition to the State Auditor on the first Mondays of January, April, July and October, and at such other times as said Auditor may call for it, under the oath of its president or treasurer, attested by a majority of the directors, showing in detail its liabilities and assets, and specifying its investments under heads of loans on mortgages, loans on collateral security, loans on personal security, bonds and stock, deposits in bank and cash on hand. Any officer or clerk of such corporation who willfully makes a false oath or affidavit relative to the financial condition of such corporation, is guilty of perjury, and upon conviction thereof must be punished accordingly.

Sec. 417. Each corporation organized under the provisions of this Chapter must set aside annually at least five per cent. of its net profits as a contingent fund to meet extraordinary expenses or losses until such surplus amounts to twenty per cent. of the capital stock of such corporation.

Sec. 418. Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

Sec. 419. Any corporation organized under the provisions of this Chapter has power to deposit any cash on hand in any bank, or with any loan and trust company, within the State, which the board of directors may determine to be solvent, upon such terms as may to such directors be satisfactory, but no greater sum than fifty thousand dollars shall be at any one time deposited in any one bank or corporation.

TITLE IV.

STOCK AND MUTUAL INSURANCE CORPORATIONS.

CHAPTER I.

Section 425. *Notice and certificate.*
“ 426. *Approval of State Auditor of articles.*
“ 427. *Amount of capital stock.*
“ 428. *Mutual insurance.*
“ 429. *Books for capital stock opened.*
“ 430. *Number of directors, election of.*
“ 431. *Investment of funds.*
“ 432. *Examination by Auditor.*
“ 433. *Powers.*
“ 434. *Policies, how made.*
“ 435. *Increase of stock.*
“ 436. *Dividends and profits.*
“ 437. *Real estate, acquiring limited.*
“ 438. *Notes given for capital stock.*
“ 439. *Assessments.*
“ 440. *Name of company.*
“ 441. *Annual statement.*
“ 442. *Auditor may demand report at any time.*
“ 443. *What statement shall show.*
“ 444. *Foreign insurance companies.*
“ 445. *Annual statement.*
“ 446. *Agent of foreign insurance companies.*
“ 447. *Auditor's duties.*
“ 448. *Deficiency in capital stock to be made good:*
“ 449. *Deficiency in mutual companies.*
“ 450. *Certificate of authority may be revoked.*
“ 451. *Deposits of security for policies.*
“ 452. *Publication of report and certificates.*
“ 453. *Expenses of examination.*
“ 454. *Auditor to furnish printed forms.*
“ 455. *Taxation.*
“ 456. *Stock plan and mutual plan.*
“ 457. *Mutual benefit companies not prohibited.*

Sec. 425. When any number of persons associate themselves together for the purpose of forming an insurance corporation for any other purpose than life insurance, they shall publish a notice of such intention once a week for four consecutive weeks, in some public newspaper in the county in which such insurance corporation is proposed to be located; and they shall also make articles of incorporation, as provided in Section 270, of this Code, and forward to the State Auditor, who shall submit the same to the Attorney General for examination, and if it shall be found by the Attorney General to be in accordance with the provisions of this Chapter, and not in conflict with the Constitution and laws of the United States and this

State, he shall make a certificate of the facts and return it to the State Auditor, who shall reject the name or title applied for by any persons, when he shall deem the same so similar to any one already appropriated by any other company or corporation as to be likely to mislead the public.

Sec. 426. When the articles of incorporation shall have received the approval of the State Auditor, such articles, with the approval, must be filed, recorded, and certified, as required by Section 273, of this Code.

Sec. 427. The capital of every corporation formed under the provisions of this Chapter shall not be less than two hundred thousand dollars, nor more than one million dollars, as may be specified in the articles of incorporation. Any such corporation shall issue stock divided into shares of the par value of one hundred dollars each, at least fifty per cent. of which stock shall be fully paid up in cash, and the remainder of the stock shall be paid for by notes made to the corporation by the stockholders, secured by at least one surety, or by mortgages on unincumbered real estate within this State, worth at least twice the amount of such notes, which notes or other security shall be approved by the State Auditor.

Sec. 428. No corporation on the plan of mutual insurance shall commence business in this State, until agreements shall have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in cash, and for the remainder of which, notes of solvent parties, founded upon actual and *bona fide* applications for insurance, shall have been received; no one of the notes received, as aforesaid, shall amount to more than five hundred dollars, and no two thereof shall be given for the same risk, or made by the same person or firm, except when the whole amount of such notes does not exceed the sum of five hundred dollars, nor shall any note be regarded or represented as capital stock unless a policy be issued upon the same within thirty days after the organization of the corporation taking the same, upon a risk which shall be for no shorter period than twelve months; each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said corporation; and no votes shall be accepted as a part of such capital stock, unless the same shall be sufficiently indorsed or secured, if security is required by the directors, and no such note shall be surrendered while the policy for which it was given continues in force.

Sec. 429. Having published the notice, and filed the publisher's affidavit of the publication thereof with the State Auditor, together with the articles of incorporation as required by Section 425, of this Chapter, the persons named in the articles of incorporation, or a majority of them, shall open books for the subscription of stock to the corporation at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the articles of incorporation is subscribed; or in case the business of such corporation is proposed to be conducted on the plan of mutual insurance, then they shall open books and receive propositions and enter into agreements in the manner, and to the extent, specified in Sections 427 and 428, of this Chapter.

Sec. 430. The affairs of any corporation organized under the provisions of this Chapter shall be managed by not more than thirteen nor less than three directors, all of whom shall be stockholders. Within thirty days after the requisite amount of stock has been subscribed, cash paid and notes given and approved, a meeting for the election of directors shall be called and held and directors elected as provided for the election of directors of trust deposit and security corporations in Section 393, of this Code, and the directors so elected shall continue in office until their successors have been duly elected and qualified, and thereafter directors shall be annually elected as provided in Section 279, of this Code.

Sec. 431. It shall be lawful for any insurance corporation organized under this Chapter or incorporated under any law of this State to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate within this State worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company or companies, and the policy or policies transferred to said corporation, and also in stocks of this State or stocks or treasury notes of the United States, in the stocks and bonds of any county or incorporated city in this State, and to lend the same or any part thereof on the security of such stocks, or lands, or treasury notes, or upon bonds and mortgages, as aforesaid, and not otherwise, and to change and reinvest the same in like securities, as occasion may from time to time require; but any surplus money over and above the paid up capital stock of any such corporation organized under this Chapter, or incorporated under any law of this State, may be invested in or loaned upon the pledge of public stocks of the United States, or any of the States, or stocks, bonds, or other evidences of indebtedness of any solvent dividend paying institution incorporated under the laws of this State or the United States, except their own stock; *Provided, always*, That the current market value of such stocks, bonds, or other evidences of indebtedness shall be at all times during the continuance of such loans at least twenty per cent. more than the sum loaned thereon.

Sec. 432. Upon receiving notification that the requirements of the preceding sections have been complied with, the State

Auditor shall make an examination, or cause one to be made, by some disinterested person officially appointed by him for that purpose, and if it shall be found (if the examination shall be made other than by the Auditor, then the finding shall be certified under oath,) that the capital herein required by the corporation named, according to the nature of the business proposed to be transacted by such corporation, has been paid in and possessed by it in money, or in such stock, notes, bonds or mortgages as are required by Sections 427, 428 and 431, of this Chapter, then he shall so certify, and if the examination be made by any other than the Auditor, then the finding shall be certified under oath; or, in the case of a mutual insurance corporation, that it has received and is in actual possession of the capital, premiums, or *bona fide* agreements of insurance, and securities to the extent and value required by Sections 427, 428 and 431, of this Chapter, and the name and residence of the maker of each premium note forming part of the capital of any such proposed mutual insurance corporation, and the amount of such note shall be returned to the Auditor. The corporators or officers of any such corporation or proposed corporation contemplated by this Chapter shall be required to certify under oath to the State Auditor that the capital exhibited to the person making the examination directed in this section was *bona fide* property of the corporation so examined: the certificates above named shall be filed in the office of the said Auditor, who shall thereupon deliver to such corporation a certified copy of the same, with his written permission for it to commence business as proposed in its articles of incorporation, which certificate and permission, on being recorded in the office of the county clerk of the county in which the corporation is to be located, in a book prepared for that purpose, shall be its authority to commence business and issue policies, and such certified copy of said certificate and permission may be used in evidence for or against said corporation with the same effect as the originals.

Sec. 433. It shall be lawful for any corporation organized under this Chapter and doing business in this State:

1. To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water.

2. To make insurance on the health of persons and against the personal injury, disablement, or death, resulting from traveling or general accident by land or water.

3. To insure the fidelity of persons holding places of public or private trust.

4. To receive on deposit, and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property.

5. To insure horses, cattle, and other stock against loss or damage by accident, theft, or any unknown or contingent event whatever, which may be the subject of legal insurance; to lend money on bottomry or respondentia, and cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan or loans which it may make on mortgages, bottomry or respondentia, and generally to do all things proper to promote these objects. No corporation shall be organized to issue policies of insurance for more than one of the above mentioned purposes; and no corporation that shall have been organized for either one of said purposes shall issue policies of insurance for any other; and no corporation organized under this Chapter, or transacting business in this State, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent. of its paid up capital, or write on a risk within the corporate limits of any one city an amount representing more than the paid up capital of the corporation, unless the excess shall be insured by the same in some other good and reliable company or companies. The restriction as to the amount of risk any such corporation shall assume, shall not apply to corporations organized to guarantee the fidelity of persons in places of public or private trust, or to corporations that receive on deposit and guarantee the safe keeping of books, money, and papers, and other property.

Sec. 434. All policies or contracts of insurance made or entered into by any such corporation may be made either with or without the seal of the corporation, but such policies shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and shall be attested by the secretary thereof.

Sec. 435. If the capital stock of said corporation shall be increased as provided in Section 345, of this Code, a certificate showing such increase shall be filed with the State Auditor, who shall make or cause to be made, an examination of the securities composing such capital stock thus increased as provided in Section 432, and if satisfied therewith, such Auditor shall thereupon deliver to such corporation a certified copy of such examination with his written permission to do business upon such increased capital, a copy of which certificate and permission shall be filed in the office of the Secretary of State, and of the county clerk of the county where the principal place of business of said corporation is located.

Sec. 436. It shall not be lawful for the directors of any insurance corporation organized under this Chapter, or incorporated under any law of this State, to make any dividend except from the surplus profits arising from their business, and in estimating such profits there shall be reserved therefrom a sum equal to fifty per cent. of the amount received as premiums on unexpired risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks and book accounts, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits and upon which action for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and in case of any such judgment the interest due or accrued thereon and remaining unpaid, shall also be reserved. The making of a dividend contrary to these provisions shall subject the corporation making it to a forfeiture of its charter.

Sec. 437. No corporation organized under this Chapter shall purchase, hold or convey any real estate, except for the purpose and in the manner herein set forth, to-wit:

1. Such as shall be necessary in the proper transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the corporation, or for money due; or,

4. Such as shall have been purchased at sales, upon judgments, decrees or mortgages obtained or made for debt or security; and it shall not be lawful for any such corporation to purchase, hold or convey real estate which shall be found in the course of its business not necessary for the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years after the same shall have been declared by the State Auditor unnecessary for its business, unless the corporation shall procure a certificate from the said Auditor that the interest of said corporation will materially suffer by a sale within the time limited, in which event the sale may be postponed for such a period as said Auditor shall direct in said certificate.

Sec. 438. All notes deposited with any mutual insurance corporation at the time of its organization, as provided for in Sections 427 and 428 of this Chapter, shall remain security for losses and claims until the accumulation of the profits invested as required by Section 431, of this Chapter, shall equal the amount of cash capital required to be possessed by stock corporations organized under this Chapter, the liability upon each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any mutual insurance corporation subsequent to its organization, in addition to cash premiums, or any insurance effected with such corporation may, after the expiration of the time of such insurance, or upon the cancellation by the corporation of the policy, be relinquished and given to the maker thereof, or his legal representatives, upon paying his proportion of the losses and expenses, which may have accrued thereon during such term. The directors of any such corporation shall have the right to determine the amount of the note to be given in addition to the premiums by any person insured in such corporation; and every person effecting insurance in any mutual corporation, and his heirs, executors, administrators and assigns, continuing to be so insured, shall thereby become members of said corporation during the period of insurance, and shall be bound to pay for losses and such necessary expenses as aforesaid accruing to said corporation, in proportion to his or their deposit note or notes. Any person insured in any mutual corporation, except in the case of notes required by this Chapter, to be deposited at the time of its organization, may at any time return the policy for cancellation, and upon the payment of the amount due at such time upon the premium note or notes shall be discharged from further liability thereon.

Sec. 439. The directors shall, as often as they deem necessary, after receiving notice of any loss or damage, determine the sums to be paid by the several members as their respective portions of such loss, and publish the same in such manner as they shall deem proper, or the by-laws shall have prescribed; but the same to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the corporation within thirty days after the publication of said notice: and if any member shall, for the space of thirty days after demand made personally or by letter for payment, neglect or refuse to pay the sum assessed upon him as a proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note or notes, with costs of suit, but execution shall issue for assessment and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which such assessment was made. If the whole amount of deposit notes shall be insufficient to pay the loss, the sufferers insured by the said corporation shall receive toward making good their respective losses a proportionate share of the whole amount of said notes, according to the sums to them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his deposit note or notes.

Sec. 440. Every insurance corporation hereafter organized as provided in this Chapter shall, if it be a mutual corporation, embody the word "mutual" in its title, which shall appear upon the first page of every policy and renewal receipt; and every corporation doing business as a cash stock company, shall, upon the face of its policies, express in some suitable manner that such policies were issued by a stock corporation.

Sec. 441. It is the duty of the president or of the vice president and secretary of each corporation organized under this Chapter, or incorporated under any laws of this State as stock or mutual insurance corporations, or doing business in this State as such annually, on the first day of December, to prepare under oath, and file in the office of the State Auditor, a full, true and complete statement of the condition of such corporation, on the last day of the month next preceding that in which such statement is filed, which statement must exhibit the following facts, viz:

1. The amount of capital stock of the corporation.
2. The names of the officers.
3. The name of the corporation and where located.
4. The amount of capital paid up.
5. The property or assets held by the corporation, specifying the value, as near as may be, of the real estate owned by such corporation, and the amount of cash on hand and deposited in banks to the credit of the corporation, and in what banks the same is deposited, the amount of moneys, stocks or bonds deposited in any foreign country, State, or Territory of the United States for the special benefit of the assured therein; the amount of cash in the hands of agents and in the course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, and its assessed valuation; the amount of all other bonds and loans, and how secured, with the rate of interest thereon, the amount due the corporation on which judgment has been obtained; the amount of stocks of this State, of the United States, of any incorporated city of this State, and of any other stock owned by the corporation, specifying the amounts, number of shares, and par and market value of each kind of stock; the amount of stock held by such corporation as collateral security for loans, with amount loaned on each kind of stock, and premium notes paid and unpaid; the amount of interest actually due and unpaid; and all other securities and their value; the amount for which preminm notes have been given on which policies have been issued.
6. The liabilities of such corporation, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends either in scrip or in cash, specifying the amount of each declared, but not due; dividends declared and due; the amount required to re-insure all outstanding risks on the basis of fifty per cent. of the premium on all unexpired risks under one year, and *pro rata*, on all unexpired risks having more than one year to run; the amount due banks or other creditors; the amount of money borrowed, and the security therefor; all other claims against the corporation.
7. The income of the corporation during the previous year, specifying the amount received for premiums exclusive of

premium notes, the amount of premiums notes received; the amount received for interest; the amount received for assessments, calls on stock or notes, or premium notes; the amount received from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid commissions; salaries, expenses and other charges of agents, clerks and other employes: the amount paid for salaries, fees and other charges of office and directors; the amount paid for local, State, national and other taxes and duties; the amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one risk.

10. The amount of risks written during the year then ending.

11. The amount of risks in force having less than one year to run.

12. The amount of risks in force having more than one and not over three years to run.

13. The amount of risks having more than three years to run.

14. The following question must be answered, viz: "Are dividends declared on premiums received for risks not terminated?" The State Auditor must withhold or withdraw the certificate of authority from any such corporation neglecting or failing to comply with the provisions of this section.

Sec. 442. The State Auditor is hereby authorized and empowered to address any inquiries to any insurance corporation in relation to its business and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and it shall be the duty of any corporation so addressed to promptly reply in writing thereto.

Sec. 443. The statement of any corporation, the capital of which is composed, in whole or in part, of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming capital, and also what proportion of said notes are still held by such corporation and considered capital.

Sec. 444. It is unlawful for any insurance corporation or company, organized or associated for any of the purposes specified in this Chapter, incorporated by, or organized under, the law of any other State, or the United States, or any foreign government, directly or indirectly, to take risks, or transact any business of insurance in this State, unless possessed of two hundred thousand dollars of actual by paid up capital, exclusive of assets of any such corporation or company as shall be deposited in any other States or Territories or foreign countries, for the special benefit or security of the insured therein; and any such company desiring to transact any such business as aforesaid by any agent or agents in this State must appoint one attorney in each county in which agencies are established, resident at the county seat, and must file with the State Auditor a written instrument, duly signed and sealed, authorizing such attorney of such corporation to acknowledge service of process for and in behalf of such company in this State, consenting that such service of process, mense or final, upon such attorney, shall be taken and held as valid as if served upon the company, and also a certified copy of their charter or articles of incorporation, together with a statement under the oath of the president or vice president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts as required from corporations organized under the laws of this State; such statement shall also show to the full satisfaction of the State Auditor that said company, if organized without the United States of America, has deposited in some one of the United States or Territories a sum not less than one hundred thousand dollars for the special benefit or security of the assured therein, and shall file, also, a copy of the last annual report, if any, made under any law of the State, Territory, or foreign country by which such company was incorporated; and no agent shall transact business for any company whose capital is impaired by the liabilities, as stated in Section 441, of this Chapter, to the extent of twenty per cent. thereof while such deficiency shall continue.

It is unlawful for any person to act for any insurance company or corporation referred to in this Chapter, directly or indirectly, in taking risks, or transacting business of insurance in this State, without procuring from the State Auditor a certificate of authority that such company or corporation has complied with all the requirements of this Chapter.

Sec. 445. The statements and evidences of investments required of foreign companies, as above, shall be renewed annually, in such manner and form as required by this Chapter, and as said Auditor may direct, with any additional statement of the amount of the losses incurred and premiums received in this State, during the preceding year, so long as such agency continues; and the said Auditor, on being satisfied that the capital, securities, and investments remain secure, as heretofore provided, shall furnish a renewal of his certificate.

Sec. 446. Every agent of any insurance company must, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village, in which the company is located, and the State or government under the laws of which it is organized, and must in no case advertise any merely authorized capital, but must in all such advertisements be limited to actual paid up capital and cash assets liable for losses only. The term agent or agents used in this Chapter includes an acknowledged agent or surveyor, or any other person or persons who in any manner, directly or indirectly, transact or aid in transacting the insurance business of any insurance company not incorporated by the laws of this State. The provisions of the foregoing sections relative to foreign companies apply to all companies, partnerships, associations or individuals, whether incorporated or not, but the provisions of this Chapter do not apply to insurance upon goods or merchandise in transit.

Sec. 447. It is the duty of the State Auditor, whenever he deems it expedient, to appoint one or more persons, not officers, agents, or stockholders of any insurance company or corporation doing business in this State, to examine into the affairs and condition of any insurance company or corporation doing business in this State, or to make such examination himself; and the officers or agents of such company or corporation must cause its books to be opened for the inspection of the Auditor or the person or persons so appointed, and otherwise facilitate such examination so far as may be in their power, and for the purpose of arriving at the truth in such cases the Auditor, or person or persons so appointed by him, have power to examine, under oath, the officers or agents of any corporation or company, or others, if necessary, relative to the business and condition of said corporation or company, and, whenever the Auditor deems it best for the interest of the public, he must publish the result of such investigation in one or more papers of this State; and, whenever it appears to such Auditor, from such examination, that the assets and funds of any corporation in this State are reduced or impaired by the liabilities of said corporation, as described under the head of liabilities in the statement required by this Chapter, more than twenty per cent. below the paid up capital stock required by this Chapter, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such period as he may designate in such requisition; or he must communicate the fact to the Attorney General, whose duty it shall then become to apply to the District Court, or if in vacation, to one of the judges thereof, for an order requiring said corporation to show cause why their business should not cease, and the court, or judge, as the case may be, shall, after the service of reasonable notice upon the corporation, proceed to hear the allegations and proofs of the respective parties, and in case it shall appear to the satisfaction of said court, or judge, that the assets and funds of said corporation are not sufficient as aforesaid, or that the interests of the public require it, the said court or judge shall decree a dissolution of said corporation and a distribution of its effects.

The said court or judge shall have power to refer the application of the Attorney General to a referee to inquire into and report upon the facts stated therein.

Sec. 448. Any corporation receiving such requisition from the State Auditor, must forthwith call upon its stockholders for such amounts as will make its paid up capital equal to the amount required by this Chapter, or the charter or articles of incorporation of said corporation; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as such Auditor shall approve, it is lawful for said corporation to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of said corporation may be found to bear to its original capital, the value of such shares for which the new certificates must be issued to be ascertained under the direction of the said Auditor, the corporation paying for the fractional part of shares: and it is lawful for the directors of such corporation to create new stock and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the corporation; and in the event of additional losses accruing upon new risks, taken upon the expiration of the period limited by the Auditor in the aforesaid requisition for the filling up of the deficiency in the capital of such corporation, and before such deficiency has been made up the directors are individually liable to the extent thereof.

Sec. 449. If upon the examination it appears to the said Auditor that the assets of any corporation upon the plan of mutual insurance under this Chapter are insufficient to justify the continuance of such corporation in business, it is his duty to proceed in relation to such corporation in the same manner as is herein required in regard to joint stock corporations, and the directors of such corporation are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the time limited by the Auditor for filling up the deficiency in the capital and before such dificiency is made up. Any transfer of the stock of any corporation organized under this Chapter, made during the pending of any investigation herein required does not release the party making the transfer from his liability for losses which may have accrued previous to such transfer.

Sec. 450. The State Auditor is authorized to examine into the condition and affairs of any insurance company, as provided for in this Chapter, doing business in this State, not organized under the laws of this State, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance corporation, and whenever it appears to the satisfaction of said Auditor that the affairs of any such company are in an unsound condition, he must revoke the certificate granted in its behalf, and must cause the notice of the revocation thereof to be published in some newspaper of general circulation at the State capital, and the agent or agents of such companies are, after such notice, required to discontinue the issuing of any policy or the renewal of any previously issued.

Sec. 451. Whenever the existing or future laws of any other State or Territory of the United States require of insurance corporations, incorporated by or organized under the laws of this State, having agencies in such other State or Territory, or of the agents thereof, any deposit of securities in such State or Territory, or of the agents thereof, any deposit of securities in such State or Territory for the protection of policy holders or otherwise, or any payment for taxes, fines, penalties, certificates of authority, license fees, or otherwise, greater than the amount required for such purposes from similar companies of other States or Territories by the existing laws of this State, then, and in every such case, all companies of such States or Territories establishing, or having heretofore established, any agency or agencies in this State, are required to make the same deposit for a like purpose with the Auditor of this State, and to pay said Auditor for taxes, fines, penalties, certificates of authority, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed upon or required by the laws of such State or Territory of the companies of this State or the agents thereof.

Sec. 452. It is the duty of every insurance corporation or company of the kind authorized to do and doing business in this State, organized under the laws of this State, or of any other State, Territory or country, to publish once, annually, in two newspapers of general circulation, one of which is published at the capital of the State, and in case of corporations organized in the State, one of which is published in the county where the principal office is located, a certificate from the State Auditor that such company or corporation has in all respects complied with the laws of this State relating to insurance.

Sec. 453. The necessary expenditure for any examination made, or ordered to be made, by the State Auditor under this Chapter, must be certified by him and paid on his requisition by the corporation or company, which is the subject of such examination, but the State Auditor has the power upon receiving information that the capital of any corporation or company is impaired, to call upon it for a full statement of its condition, and in event of refusal or neglect to answer the requisition of the Auditor, as aforesaid, he must proceed to make the examination required by this Chapter, and to take the necessary action to terminate the business of said corporation or company in this State.

Sec. 454. It is the duty of the State Auditor to cause to be prepared and to furnish to each of the corporations organized under the laws of this State, and to attorneys or agents of companies incorporated by other States or Territories and foreign governments, who may apply for the same, printed forms of statements required by this Chapter, and he may, from time to time, make such changes in the form of these statements as are best adapted to elicit from the corporations or companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated.

Sec. 455. Each and every insurance corporation or company transacting business in this State must be taxed upon the excess of premiums received over losses and ordinary expenses incurred within the State during the year previous to the year of listing in the county where the agent conducts the business, properly proportioned by the corporation or company at the same rate that all other personal property is taxed, and the agent shall render the list, and be personally liable for the tax; and if he refuse to render the list or to make affidavit that the same is correct, to the best of his knowledge and belief, the amount may be assessed according to the best knowledge and discretion of the assessor. Insurance companies and corporations are subject to no other taxation under the laws of this State, except taxes on real estate and the fees imposed by law.

Sec. 456. It is unlawful for any corporation organized upon the mutual plan to do business and take risks upon the stock plan, or for a corporation organized as a stock corporation to do business upon the plan of mutual insurance.

Sec. 457. Nothing in this chapter must be so construed as to prevent any number of persons, not exceeding two hundred, from making mutual pledges, and giving valid obligations to each other, for their own insurance from loss by fire or death; but such association of persons must in no case insure any property not owned and occupied by one of their number; and no life except that of one of their own number; nor are the provisions of this Chapter applicable to such associations or companies. But such associations or companies must not pay any salaries or compensation to officers, agents, or other employes, or receive premiums, or make dividends.

CHAPTER II.

ASSESSMENT LIFE INSURANCE CORPORATIONS.

Section 462. Incorporation.
" 463. Articles of incorporation.
" 464. Auditor's certificate and articles to be filed and recorded.

Section 465. Directors.
" *466. Assessment notice.*
" *467. How surplus funds invested.*
" *468. Statement to Auditor.*
" *469. Auditor may employ experts.*
" *470. Auditor to examine into financial condition.*
" *471. Action instituted for non-compliance.*
" *472. License to foreign corporations.*
" *473. Duty of Auditor.*

Sec. 462. Corporations for the purpose of furnishing life indemnity or pecuniary benefits to the widows, orphans, heirs or relatives by consanguinity or affinity, devisees or legatees of deceased members, or accident or permanent disability indemnity to members thereof, where the funds for the payment of such benefits are secured in whole or in part by assessment upon the surviving members, may be organized or do business in the State of Montana, subject to the conditions hereinafter provided. Such corporation must show by a sworn statement a guarantee fund of not less than twenty thousand dollars for the benefit and security of the policy holders or those holding certificates of life indemnity.

Sec. 463. Any three or more persons, citizens of the United States, a majority of whom are residents of this State, may associate themselves together as a body corporate, for which purpose they must make, sign and acknowledge before any officer authorized to take acknowledgement of deeds in this State articles of incorporation, in which must be stated the name or title by which such corporation, association or society shall be known in law, the location of its principal business office, which office must be located in this State, the name and residence of the incorporators, the object of the corporation, with its plan of doing business, clearly and fully defined, the number of its directors, and the names of those elected to serve until its first annual meeting, the limits as to age of applicants for membership, which must be between the ages of sixteen and sixty-five, and that strict medical examinations are required, and that *bona fide* applications have been secured for at least five hundred thousand dollars by not less than two hundred persons, and two per cent. on such insurance, together with said guarantee fund of twenty thousand dollars, has been paid into the treasury and deposited in trust for the benefit of the beneficiaries of such corporation, which articles of incorporation must be submitted to the State Auditor, who must examine the same, and, if he finds that the objects and purposes are fully and definitely set forth within the provisions of this Chapter, and that the name or title is not the same as that of some other corporation already organized under the laws of this State, or does not so closely resemble a title or name in use as to have a tendency to mislead the public, must approve the same. If for either of the aforesaid or other good and sufficient reasons the said Auditor shall be unwilling to approve the articles of incorporation, he must immediately inform the incorporators of the fact, stating his objections fully in writing. If the articles are sufficient and satisfactory, the Auditor must indicate his approval thereof under his hand and official seal.

Sec. 464. When the articles of incorporation have received the approval of the State Auditor, such articles, with the approval, must be filed, recorded and certified as required by Section 273, of this Code.

Sec. 465. The affairs of all corporations organized or doing business under the provisions of this Chapter, must be managed by not less than three directors, a majority of whom must be residents of this State, who must be elected from and by the members at such time and place, and for such period, not exceeding three years, as may be provided for in the by-laws, and may be eligible for re-election; but as near as practicable, an equal number must be elected each year.

Sec. 466. Assessment notices sent to members by any corporation doing business under the provisions of this Chapter, must state the object or objects for which the money to be collected is intended; and no part of the funds collected for the payment of death benefits must be applied for any other purpose.

Sec. 467. Any corporation transacting business under the provisions of this Chapter, may provide in its by-laws for the accumulation of a surplus general or guarantee fund, which may be invested only in its corporate name in the United States, State, territorial or other first-class convertible bonds or stocks, upon which interest has not been in default. Such fund when so set apart and so invested, with the increase thereof, belongs to such corporation, and not to the directors or officers thereof; and must be used only for mortuary benefits, without assessment, or applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which such fund is specially provided and set apart, and such use shall not be deemed or continued to mean a profit received by members within the meaning of the statutes of this State.

Sec. 468. Corporations organized under the provisions of this Chapter, or that have heretofore been organized within the State or Territory of Montana for the purpose of furnishing life, accident, or permanent disability, indemnity or mortuary benefit on the assessment plan, in accordance with the provisions of Section 462, of this Chapter, are not insurance corporations and are not subject to the laws of this State relating thereto, but must comply with and conform to all the requirements and provisions of this Chapter; and must, by their president and secretary, or like officers, make to the State Auditor annually, on or before the first day of December, a statement, under oath, for the preceding year upon blanks furnished by the State Auditor, which statement must show their financial condition, assets, liabilities, total amount of indemnity in force, number of members, number whose membership has terminated during the year, and cause thereof, total receipts and sources thereof, total expenditures and objects thereof, and the average amount paid on each certificate, and must pay into the treasury of the State, upon filing said certificate, a fee of twenty-five dollars, and the said Auditor must publish said statement in his annual report. But nothing herein contained applies to any organization of a purely social, religious or benevolent character, where no commissions are paid, and no salaried officers or agents are employed; or to any local association or society organized under, or subject to, the control of a grand or supreme body; or to any secret organizations, having subordinate lodges or councils, which have been organized under the laws of this State or any other State or Territory, and which are now permitted to do business in this State.

Sec. 469. The State Auditor has authority to appoint an expert to verify the statements aforesaid by examination of the books and papers of the corporation, and make such other examination as he may deem necessary. The expense of such examination must be paid by the corporation having its books examined, and must not exceed the necessary traveling and hotel expenses of said expert, and reasonable compensation of said expert while engaged in such examination.

Sec. 470. The State Auditor must, at the request of any corporation doing business under the provisions of this Chapter in this State on the assessment plan, make an examination of such corporation, and furnish a certificate of the results of such examination, showing all its assets and how invested, and such other particulars as are necessary to show the character and condition of said corporation, and the necessary expense of the said examination must be paid by the corporation requesting the same.

Sec. 471. Whenever any corporation, organized or having transacted business under the provisions of this Chapter, neglects or refuses to make its annual statement, as required by this Chapter, or whenever the State Auditor finds upon examination, as provided in Section 469, of this Chapter, that any willfully false or untrue statements in any material respect have been made, or that the business of the corporation has been conducted fraudulently or in willful violation of any of of the provisions of this Chapter, or that the corporation has transacted business different from that authorized by its articles of incorporation, he must communicate the facts to the Attorney General, whose duty it is to apply to the District Court, where its principal office is located, for an order requiring the officers, directors or managers of such corporation to show cause why they should not be removed from office or its business closed; and the court must thereupon hear the allegations and proofs of the respective parties, and if it appears to the satisfaction of the court that any one or more of them have been guilty of fraud or any material irregularity or violation of the law to the injury of the said corporation, or of non-compliance with any of the provisions of this Chapter, the court must decree a removal from office of the guilty party or parties, which decree forever bars them from holding a similar office, and must substitute a suitable person or persons to serve until the regular annual meeting or until a successor or successors are regularly chosen or elected; or, if it appears to the said court that the interests of its members or of the general public so require, the court may decree a dissolution of such corporation and a distribution of its effects.

Sec. 472. Any corporation, association, or society organized under the laws of any other State, Territory or government, for the purpose of furnishing life, accident, or permanent disability indemnity upon the assessment plan, where benefits are paid to such as have an insurable interest only, complying with the provisions of this Chapter, so far as applicable, and showing that it has deposited with the proper authorities or department of the Territory, or State, or government under which it is incorporated, not less than fifty thousand dollars as a guarantee fund for the security of its members, may be licensed by the StateAuditor upon payment into the State treasury of a fee of one hundred dollars, to do business in this State, provided such corporation first deposits with the said Auditor a certified copy of its charter or articles of incorporation, a copy of the statement of business for the preceding year, sworn to by its president and secretary, or like officers, showing a detailed account of expenses and income, the amount of life indemnity in force, its assets and liabilities in detail, number of members, and a certificate, sworn to by the president and secretary, or like officers, setting forth that an ordinary assessment upon the members is sufficient to pay its maximum certificate of membership to the full limit named therein; a copy of its policy or certificate of membership, application and by-laws, which must show that death losses are in the main provided for by assessments upon the surviving members; and it must legally designate a person or agent residing in the State to receive service of process for said corporation.

Sec. 473. Every such corporation, association or society must pay into the treasury of the State, upon filing each annual statement, a fee of twenty-five dollars, and in the event of its failure to make such statement on or before the first day of December of each year, the State Auditor must revoke its license, and thereafter, or until such annual statement is made, it must not do business in this State. When the State Auditor has reason to doubt the solvency of any foreign corporation, association or society acting under the provisions of this Chapter, and when he is not fully satisfied with the certificate of the insurance commissioner, or other like officer, of the State, Territory or government, of its organization, he may make an examination, as provided in this Chapter, for the examination of corporations organized in this State; and if he find that it has made fraudulent or untrue statements, or that it is conducting its business in an irregular or illegal manner; or if it appears that any such corporation in this State is conducting its business fraudulently, or is not in good faith carrying out its contracts with its members in this State, he must report the same to the Attorney General, who must thereupon commence proceedings against such corporation or association, requiring it to show why its license to do business in this State should not be revoked.

TITLE V.

COLLEGES AND SEMINARIES OF LEARNING.

Section 480. How incorporated.
" 481. What articles of incorporation must contain.
" 482. Powers of trustees.

Sec. 480. Any number of persons who desire to establish a college or seminary of learning may incorporate themselves as provided in this Part.

Sec. 481. In lieu of the requirements of Section 270, the articles of incorporation must contain:

1. The name of the corporation.
2. The purposes for which it is organized.
3. The place where the college or seminary is to be conducted.
4. The number of its trustees, which shall not be less than three nor more than thirteen, and the names and residences of the trustees. The term for which the trustees named and their successors are to hold office may also be stated. If it is desired the trustees or any portion of them shall belong to any organization, society or church, such limitation shall be stated.
5. The names of those who have subscribed money or property to assist in founding the seminary or college, together with the amount of money and description of property subscribed.

Sec. 482. Unless otherwise provided in the articles of incorporation, the board of trustees must, as soon as organized, so classify themselves that one-third of their number, as near as possible, must go out of office every year, and thereafter the trustees shall hold office for three years. A majority of the trustees constitute a quorum for the transaction of business, and the office of the corporation must be at the college or seminary.

The trustees have power:

1. To elect, by ballot, annually, one of their number as president, and another as secretary, also any person as treasurer, of the board.

2. Upon the death, removal out of the State, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place. If such corporation is formed under the patronage or authority of a church organization the trustees may be elected by the presbytery, conference, convocation, or other ruling body of such church. If formed by a society then by the members of the society.

3. To elect additional trustees; *provided*, the whole number elected does never exceed thirteen at any one time.

4. To declare vacant the seat of any trustee who absents himself from eight successive meetings of the board.

5. To receive and hold by purchase, gift, devise, bequest or grant, real or personal property, for educational purposes connected with the corporation, or for the benefit of the institution.

6. To sell, mortgage, lease, contract and otherwise use and dispose of the property of the corporation in such manner as they shall deem conducive to the prosperity of the corporation.

7. To direct and prescribe the course of study and discipline to be observed in the college or seminary.

8. To appoint a president of the college or seminary, who shall hold his office during the pleasure of the trustees.

9. To appoint such professors, tutors, and other officers as they shall deem necessary, who shall hold their offices during the pleasure of the trustees.

10. To grant such literary honors as are usually granted by any university, college, or seminary of learning in the United States, and in testimony thereof to give suitable diplomas under their seal, and the signature of such officers of the corporation and the institution as they deem expedient.

11. To fix salaries of the president, professors, and other officers and employes of the college or seminary.

12. To make all by-laws and ordinances necessary and proper to carry into effect the preceding powers and necessary to advance the interests of the college or seminary; *Provided*, that no by-law or ordinance shall conflict with the Constitution or laws of the United States or of this State.

TITLE VI.

BUILDING AND LOAN CORPORATIONS.

Section 500. Certificate.
" *501. Secretary of State to issue license.*
" *502. Meeting of subscribers, number and term of trustees.*
" *503. Vacancies.*

Section 504. Officers shall be stockholders.
" *505. Certificates after first meeting.*
" *506. Certificate of Secretary of State.*
" *507. When license revoked.*
" *508. No compensation to officers, except secretary.*
" *509. Bonds of secretary and treasurer.*
" *510. Shares of stock, subscription, etc.*
" *511. Stockholders may withdraw.*
" *512. Meeting of trustees, loans offered.*
" *513. Loans confined to stockholders.*
" *514. Loans, how secured.*
" *515. Payment of interest, etc.*
" *516. Payment before maturity.*
" *517. May purchase mortgaged property.*
" *518. Former corporations not affected.*
" *519. Corporations formed under previous law may re-form under this law.*
" *520. Effect of such re-formation.*

Sec. 500. When three or more persons may desire to become incorporated as a mutual building and loan association, for the purpose of aiding in building homesteads and loaning money to the members of such association only, they shall make a certificate to that effect in writing, signed and acknowledged before the proper officer in the manner provided for the acknowledgement of deeds, in which certificate shall be stated the name of such association and the purpose for which it is formed, the amount of capital stock, the number of shares and the par value of each share of its capital stock, the name of the city, town, or village, and county where the principal part of its business shall be transacted; the term of its existence and the name of nine persons who shall act as trustees and manage the affairs of such association until the first annual meeting of its stockholders, which certificate shall be filed in the office of the Secretary of State.

Sec. 501. Upon the filing of such certificate in the office of the Secretary of State, he shall issue to such persons named therein as trustees a license to take subscriptions for the capital stock of such association at such time and place as they may determine. But such license shall not be issued to the trustees of more than one association having the same name.

Sec. 502. When fifty shares or more of the capital stock of such association shall be subscribed for, the said trustees shall call a meeting of the subscribers for the purpose of electing nine trustees, adopting by-laws for such association and the transaction of such other business as may be required, which meeting shall be the first annual meeting of the stockholders of such association; notice of such meeting shall be given by depositing in the postoffice at the place where the principal part of the business of such association is to be transacted, at least five days prior to holding the same, a written or printed notice stating the time, place, and object of such meeting, enclosed in an envelope or wrapper, and addressed to each subscriber, with postage thereon paid. At such meeting there shall be elected nine trustees. The trustees so elected shall be divided into three classes, as follows: The term of office of the first three elected shall be for the period of three years; the term of office of the second three elected shall be for the period of two years; and the term of office of the three last elected shall be for the period of one year. Thereafter, annually, at a meeting of the stockholders, three trustees shall be elected whose term of office shall be for the period of three years.

Sec. 503. In case of a vacancy in the office of any trustee, the remaining trustees may fill the same by appointment until the first annual meeting thereafter, when such a vacancy, if the term be not expired, shall be filled by election by the stockholders.

Sec. 504. The trustees and officers of such association shall be stockholders therein.

Sec. 505. Within ten days after holding said first annual meeting of stockholders, the trustees licensed as provided in Section 501, of this Title, shall make a certificate showing the fact of holding such annual meeting pursuant to call, and notice given as provided in Section 502, of this Title, the name and respective terms of office of the trustees elected thereat, the names of the subscribers for the stock of said association and the number of shares subscribed for by each, which certificate shall be subscribed and verified by at least a majority of such licensed trustees and filed in the office of the Secretary of State.

Sec. 506. The Secretary of State shall, upon receiving the certificate provided in Section 505, file and preserve the same in his office and thereupon issue a certificate of the complete incorporation of such association, attaching thereto and making part thereof, a copy of all papers filed in his office relating thereto under the provisions of this Title, duly authenticated under his hand and the seal of the State; and the same shall be recorded at the expense of said association in the office of the county clerk of the county wherein the principal part of the business of such association is to be transacted; and the recording thereof shall fully incorporate such association.

Sec. 507. In case such association be not fully incorporated as provided in this Title within one year after the issuing of said license, the same shall be deemed revoked and any further proceeding thereunder shall be unlawful.

Sec. 508. Neither the trustees nor any other officer of such association shall be paid any compensation for services, except its secretary.

Sec. 509. The treasurer of such association shall give a bond in a sum equal to double the amount of funds of such association which may come into his possession, conditioned for the safe keeping and the payment or delivery thereof, according to the order of the board of trustees, the amount of which bond shall be fixed by the board of trustees. Such bond shall be signed by at least three good and sufficient sureties, approved by the said board. The secretary may also be required to give bonds for such amount as the trustees may determine.

Sec. 510. The par value of the shares of stock shall be one hundred dollars each, and shall be deemed personal property, transferable upon the books of the corporation in such manner as may be provided by the by-laws. Subscriptions therefor shall be made payable to the association in such periodical installments and at such times as shall be prescribed by the by-laws. But no periodical payments shall be required exceeding two dollars on each share, and every share of such stock shall be subject to a lien for the security of unpaid installments and other charges incurred thereon under the provisions of the by-laws, and the by-laws shall prescribe the manner and the time of enforcing such lien. New shares of stock may be issued in lieu of shares withdrawn or forfeited. The stock may be issued in one or in successive series in the manner and in such amount, not to exceed the total capital stock, as the board of trustees may determine.

Sec. 511. Any stockholder desiring to withdraw from such corporation, shall have power to do so by giving sixty days' written notice, and at the expiration of sixty days from date of service of such notice, such stockholder shall be entitled to receive the amount paid in by him, and interest thereon at such rate per annum, or such proportion of the profits thereon as the by-laws may determine, less any initiation fee, and all fines and other charges assessed against such stock pursuant to the provisions of the by-laws. But at no time shall more than one-half of the funds in the treasury of the corporation be subject to the demand of withdrawing stockholders without the consent of the board of trustees, and no stockholder shall be entitled to withdraw whose stock is held in pledge for security. The withdrawing stockholders shall be paid in the order in which notice of withdrawal had been given. Upon the death of a stockholder, his or her legal representatives shall be entitled to the full amount paid in by such stockholder on all shares not borrowed upon or pledged to the corporation as collateral security and interest at such rate as prescribed by the by-laws, first deducting all fines and charges that may be due on said stock, but no fines shall be charged upon the stock of a deceased member from and after his or her decease, unless the legal representative of such decedent assumes the future payment of the dues and assessments thereon.

Sec. 512. The board of trustees shall hold such stated meetings not oftener than once each month, as the by-laws may prescribe, at which meetings the money in the treasury, if one hundred dollars or more, shall be offered for loan in open meeting, and the stockholder who shall bid the highest premium or interest for the preference or priority of loan, shall be entitled to receive a loan not exceeding one hundred dollars per each share of stock held by such stockholder, less the premium bid.

Sec. 513. The funds of such corporation shall be loaned only to *bona fide* stockholders therein, and in no case shall a loan be made exceeding one hundred dollars per each share of stock held by the borrower, but the by-laws of every such corporation may prescribe such fractional part of one hundred dollars per share as may be loaned to any stockholder.

Sec. 514. Every loan shall be secured by mortgage or conveyance of sufficient real estate, unincumbered except by prior loans of such corporation. But the shares held by any stockholder may be received as security for the amount of the withdrawal value thereof.

Sec. 515. In case of non-payment of installments of interest or fines, by borrowing stockholders, for the space of three months, payment of principal and interest and fines, without deducting the premium paid or the interest thereon, may be enforced by proceedings against the securities, according to law, upon the order of the board of trustees.

Sec. 516. A borrower of money from such association may repay the same at any time, and in that event shall be allowed such a proportionate amount of the premium paid at the time of borrowing as the board of trustees may deem equitable or the by-laws may prescribe; and the amount of premium so refunded shall be determined as nearly as practicable on the basis of the maturity of the series of stock in which the shares loaned upon were issued.

Sec. 517. Any association incorporated under the provisions of this Title, is hereby authorized to purchase at any judicial sale, or at any other sale, public or private, any real estate upon which said corporation may have a mortgage, lien or any incumbrance, or in which said corporation may have an interest, and to sell, lease, or mortgage the same.

Sec. 518. Nothing in this Title shall be construed to affect the validity of any of the operations of any building and loan association incorporated prior to the passage of this Code.

Sec. 519. Any corporation of the nature of those herein provided for, now existing in this State, desiring to conform to the provisions of this Title, shall first obtain the written consent of all its stockholders thereto, and may thereupon call a meeting of the stockholders in the manner provided in Section 502, and at such meeting elect a board of nine trustees, as therein provided, and make its by-laws and all other conditions of such corporation conform to the provisions of this Title; and thereupon a majority of the trustees so elected, shall make and file in the office of the Secretary of State such a certificate as is required in Section 505, together with a certificate conforming to all the requirements of Section 500, except as to the names of the persons who shall act as trustees and manage the affairs of such association until the first annual meeting. Upon receiving the certificates mentioned in this section the Secretary of State shall issue his certificate in the manner provided in Section 506, and in addition shall state that such corporation existed theretofore and is thereby made to conform to the provisions of this Title. But the name of such corporation shall not be changed.

Sec. 520. The validity of all proceedings, contracts, deeds, mortgages or other conveyances or contracts of such corporation shall in no wise be affected by its re-formation as provided in next preceding section.

TITLE VII.

RELIGIOUS, SOCIAL, AND BENEVOLENT CORPORATIONS.

Section 525. Who may incorporate.
" 526. Resolution to incorporate.
" 527. Execution and filing articles.
" 528. What may be provided by the by-laws.
" 529. Representative body of a religious society may incorporate.
" 530. Corporations may sell or mortgage real estate.

Sec. 525. Associations, where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Odd Fellows, Good Templars, granges of Patrons of Husbandry, and all other associations, societies and orders of like character, and social clubs and agricultural societies, stock growers' associations and other associations of like character, may become incorporated upon complying with the provisions of this Title.

Sec. 526. It shall be lawful for any such association, at any regular meeting thereof, or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present a resolution to the following effect: "*Resolved*, That the trustees of this (church, lodge, or other association, as the case may be,) to wit: (A, B, C, D, etc., giving the name of the duly elected trustees,) be and are hereby authorized to incorporate this (church, lodge, or as the case may be,) and for that purpose to file with the proper officer articles of incorporation as are required by law. Such trustees must conduct the affairs of the corporation so formed until their successors are elected and qualified.

Sec. 527. The trustees, of whom there must not be less than three, nor more than thirteen, named in such resolution, may thereupon make, file and record articles of incorporation as provided for in this Part, and must attach to such articles a copy of the resolution, certified to by the president and secretary of such meeting.

Sec. 528. Corporations organized for purposes other than profit may, in their by-laws, ordinances, constitutions or articles of incorporation, in addition to the provisions in Title I., of this Part, provide for:

1. The qualification of members, mode of election, and terms of admission to membership.

2. The fees of admission and dues to be paid into their treasury by members.

3. The number of members that constitutes a quorum at any meeting of the corporation, and that election of officers of the corporation by a meeting so constituted, shall be as valid as if there had been a majority of the members present thereat and voting.

4. The expulsion and suspension of members for misconduct or non-payment of dues; also, for restoration to membership.

5. Contracting, securing, paying and limiting the amount of their indebtedness.

6. Other regulations, not repugnant to the Constitution or laws of the State and consonant with the objects of the corporation.

Sec. 529. The representative body of any religious society in this State, as conference, synod, convocation, convention or the like, may elect not less than three of its members as trustees, with authority to form a corporation for the holding and administering of trust funds for general or special purposes, or for holding the legal title to real estate for the use of and in trust for the said society; and any religious society may authorize the formation of as many corporations of this character as may be deemed necessary and proper for its purpose. Such persons must thereupon file articles of incorporation as provided for in Section 527, of this Title, in the office of the Secretary of State. There must be attached to the articles of incorporation, a transcript of the record of their election as such trustees, certified by the presiding and recording officer of the body by which they were elected, and thereupon such persons and their successors in office shall become a body politic and corporate, with like powers as other corporations provided for in this Part.

Sec. 530. Corporations of the character mentioned in this Title may mortgage or sell real property held by them, upon obtaining an order for that purpose from the District Court held in the county in which the property is situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to mortgage or sell has been given by publication in such manner and for such time as the court or judge has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise.

TITLE VIII.

RAILROAD CORPORATIONS.

CHAPTER I.

GENERAL POWERS.

Section 534. *May construct and operate railroads.*
" 535. *Capital stock.*
" 536. *Sale of delinquent stock.*
" 537. *Books to be opened for subscription. Election of directors.*
" 538. *Powers of a railroad corporation.*
" 539. *Right of way in canyon.*
" 540. *Survey, annual work, and completion of road.*
" 541. *Railroads on reservations.*
" 542. *May change location or grade.*
" 543. *May borrow money and secure payment.*
" 544. *May buy and sell necessary real estate.*
" 545. *May divert streams, etc.*
" 546. *Principal office.*
" 547. *May maintain telegraph line.*
" 548. *State not responsible for debts of railroad.*
" 549. *Liability to employe.*
" 550. *May increase capital stock.*
" 551. *May accept provisions of Act of Congress.*
" 552. *Regulations.*
" 553. *Annual report, what to contain.*
" 554. *May extend line into Montana.*
" 555. *Two or more may consolidate.*
" 556. *May lease or purchase other railroads.*
" 557. *May issue and secure bonds.*
" 558. *Judgment against.*

Sec. 534. Any railroad corporation shall be authorized to locate, construct, maintain and operate a railroad with a single or double track, with such side tracks, turnouts, machine shops, offices and depots as may be necessary between any points it may select within the places named in the articles of incorporation as termini of such road, and it may construct branches to any point in this State, and connect its road with that belonging to any other person or corporation, and may consolidate with any road not a parallel or competing line.

Sec. 535. The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of one hundred dollars each; such shares shall be regarded as personal property. An installment of ten per centum on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments, not exceeding twenty-five per centum on the capital stock, which installments shall not be called for more frequently than once in three months, and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

Sec. 536. If any installment of stock shall remain unpaid for sixty days after the time specified for payment thereof, whether such stock is held by the original subscriber, or his assignee, trustee or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper of general circulation in this State and by written notice sent by mail within five days after default made to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence, or, if that is not known to the secretary, then to his address as last reported by him to the secretary of the corporation; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner; but where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

Sec. 537. The persons named in said articles of incorporation, or a majority of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said corporation, at such time or times and at such place or places as they may deem expedient, after having given at least thirty days' notice in a newspaper of general circulation in this State, of the time and place of opening books; and as soon as five per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place, within the State, as they may designate, for the purpose of electing five or more directors, who shall continue in office until the time fixed for the annual election, which time shall be within six months from the date when such directors were elected, and until their successors are elected and qualified; at the time and place appointed directors shall be elected in the manner provided in Section 284, of this Code. After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the non-payment thereof, after the expiration of the thirty days' notice of sale hereinbefore provided for. The persons named in such articles, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board and be competent to fill vacancies therein, make by-laws, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require: and the directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties; and they may from time to time make such dividends of the actual net profits of said corporation as they may think proper, and shall hold their offices until their successors are elected and qualified.

Sec. 538. Every railroad corporation has power:

1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employes may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad.

3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road.

4. To lay out its road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same.

5. To construct their road across, along, or upon any stream water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch flume, which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch or

flume thus intersected, to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise.

6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in Title VII., Part III., Code of Civil Procedure.

7. To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in Title VII., Part III., Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation.

8. To carry persons and property on their railroad, and receive tolls or compensation therefor.

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight, and business.

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change, or amendment by the Legislative Assembly at any time.

11. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

Sec. 539. Any such corporation whose right of way, or whose track upon such right of way, extends through any canyon, pass, or defile shall not exclude any other such corporation from a passage through the same upon equitable terms; and in case of disagreement upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction; and if the passage of any such railroad through the canyon, pass or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by the Code of Civil Procedure, and if it shall become necessary for any other railroad company passing through the State to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing; and when two or more companies desire to pass through the same canyon, pass or defile, neither shall exclude the other from passing through the same, and neither shall have any compensation therefor, except the actual damage done by so doing; and should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing.

Sec. 540. Every railroad corporation shall be required to complete fifteen miles upon each of its lines, branches, or extensions, each year subsequent to the passage of this Title, in the case of companies already organized, and each year subsequent to the filing of articles of incorporation in the case of corporations hereafter organized. But organization under this Chapter shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made, and if such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. Each railroad corporation shall complete the whole line of its road within five years from the passage of this Chapter, in the case of corporations already organized, and within seven years from the date of filing articles of incorporations in the care of corporations hereafter organized. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the District Court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause; and if, in its judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

Sec. 541. Any railroad corporation now or hereafter organized under the laws of this State, for the purpose of building railroads which extend upon Indian or military reservations within this State, shall not forfeit its charter, or any rights or privileges, by reason of its failure to build and complete any portion of its road upon such reservations, until a grant of a right of way therefor has been obtained from the United States, or any parties authorized in that behalf, and thereafter the provisions of this Chapter shall be applicable to said corporations.

See. 542. Whenever any corporation organized under this

Chapter shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

Sec. 543. Any corporation organized under this Chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sums of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. And if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said corporation of whatever kind then existing or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held and enforced in the same manner as mortgages upon real estate now are held and enforced.

Sec. 544. Any such corporation may acquire by purchase or gift any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right of way, or such as may be granted to aid in the construction of such road, and convey the same in such manner as the directors may prescribe, and all deeds and conveyances made by such corporation shall be signed by the president under the seal of the corporation.

Sec. 545. It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed; but such corporation shall, without unncessary delay, place such road or stream in such condition as not to impair its former usefulness.

Sec. 546. Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and may change the same at pleasure, giving public notice in one or more newspapers in the State having the largest circulation, and notice to the Secretary of State of such establishment or change.

Sec. 547. Any such corporation is hereby authorized to construct, maintain and operate a telegraph line along its road. The provisions of this Chapter concerning the grant for station buildings, work-shops, depots, machine shops, switches, side tracks, turntables and water stations shall not apply to mineral lands of the United States, or to lands reserved by the United States, nor to any lands as against the United States.

Sec. 548. Nothing in this Chapter shall be construed to make the State, or any municipality therein, liable for any debts or obligations of any character which may be contracted by such corporations.

Sec. 549. In every case the liability of the corporation to a servant or employe acting under the orders of his superior, shall be the same in cases of injury sustained by default or wrongful act of his superior, or to an employe not appointed or controlled by him, as if such servant or employe were a passenger.

Sec. 550. If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

Sec. 551. Any such corporations may accept the provisions of any Act of Congress providing for the creation of bodies corporate for the purposes aforesaid, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

Sec. 552. If any railroad corporation within this State shall ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter or passenger, or make any unjust discrimination in its rates, or shall give to any member of the legislative, executive or judicial department of this State, any ticket, pass or privilege other than is given to other patrons of its road generally, or shall neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage. or safe cars for the transportation of express matter and freight, or shall use any highly inflammable oils for lighting any car on its passenger trains. or shall willfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this State, or fail to light its track in any city in this State, or shall transport within this State on any of its passenger cars, any oil of vitriol, gun powder, lucifer matches, nitro glycerine, glynon oil, nytroleum or blasting oil, or nitrate oil, or powder mixed with any such oil, or fibre saturated therewith, or duolin or giant powder, or blasting powder, or any other goods of a dangerous nature, or in any incorporated city or town in this State run any train at a rate of speed forbidden by the laws of this State or the ordinances of such city or town, or run any train over any unsafe bridge, trestle work, or aqueduct in this State; or fail to have upon any locomotive in use by it in this State a bell and steam whistle in fit condition for use thereon; or shall permit any locomotive to approach any highway, road or railroad crossing, without causing the whistle to be sounded, at a point between fifty and eighty rods from the crossing, and the bell to be rung from said point until the crossing is reached; or permit any locomotive or cars to cross any railroad without coming to a full stop immediately before crossing; or shall willfully fail to make any report herein required, or which may be hereafter required by any law of this State, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined for the first offense in the sum of one thousand dollars, and for the second violation of the same provision, two thousand dollars, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than five nor more than ten thousand dollars.

Sec. 553. It is hereby made the duty of the president or other officer in charge of each and every railroad corporation having a line of railroad in this State, to make an annual report to the State Auditor for the year ending on the 30th day of November preceding, which report shall be verified by the oath or affirmation of such president or other officer in charge, and be filed in the office of the State Auditor by the first day of December in each year, and shall state:

1. The amount of capital stock paid in.
2. The amount of capital stock unpaid.
3. The amount of funded debt.
4. The amount of floating debt.
5. Cost of construction.
6. Cost of right of way.
7. Cost of equipment.
8. All other items embraced in cost of road and equipment, not embraced in three preceding items.
9. Total cost of road and equipments to date.
10. Length of single main track, laid with iron or steel.
11. Length of double main track, and width of guage.
12. Length of branches, stating whether they have single or double tracks.
13. Aggregate length of sidings, and other tracks not above enumerated; total length of iron and steel, each separately stated, embraced in preceding items.
14. The maximum grade, with its length in main road, and also in branches.
15. The shortest radius of curvature, with length of curve in main road and also in branches.
16. Total degrees of curvature in main road, and also in branches.
17. Total length of straight line in main road, and also in branches.
18. Number of wooden bridges, and aggregate length in feet.
19. Number of iron bridges, and aggregate length in feet.
20. Number of stone bridges, and aggregate length in feet.
21. The number of wooden trestles and aggregate length in feet.
22. The greatest age of wooden bridges.
23. The average age of wooden bridges.
24. The greatest age of wooden trestles.

25. The number and kind of new bridges built during the year, and length in feet.

26. The length of road unfenced on either side, and the reason therefor.

27. Number of engines.

28. Number of passenger cars.

29. Number of express and baggage cars.

30. Number of freight cars.

31. Number of other cars.

32. The highest rate of speed allowed by express passenger trains.

33. The highest rate of speed allowed by mail and accommodation trains.

34. The highest rate of speed allowed by freight trains.

35. The rate of fare for passengers charged for the respective classes per mile.

36. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local.

37. The length of new iron or steel laid during the year.

38. The length of re-rolled iron laid during the year.

39. The number of miles run by passenger trains.

40. The number of miles run by freight trains.

41. The number of passengers (all classes) carried in cars.

42. The number of tons of through freight carried.

43. The number of tons of local freight carried.

44. The number of tons of ore, cattle and grain transported.

45. The value of coin, bullion and dust carried.

46. Earnings from transportation of passengers.

47. Earnings from transportation of freight.

48. Earnings from mail and express.

49. Earnings from all sources. Total earnings for the year.

50. Expenditures for construction and new equipments.

51. Expenditures for maintenance of way and structure.

52. Expenditures for maintaining and operating motive power and cars.

53. Expenditures for transportation expenses, including those of stations and trains.

54. Expenditures for dividends, rate per cent. and amount.

55. All other expenditures, either for management of road, maintenance of way, motive powers and cars, and for other purposes. Total expenditure during the year.

56. The number and kind of farm animals killed and the amount of damages paid therefor.

57. A statement of all casualties resulting in injuries to persons and the extent and causes thereof, and such other and further information as may be required by the State Auditor; but if any corporation shall be unable to furnish the required information, the reason thereof shall be given.

The State Auditor shall prepare and furnish to each railroad corporation, or to each organization having one or more railroads in charge, blank forms for making the reports required by this Chapter, which blanks may be so prepared by the Auditor as to obtain the information required by this section more in detail or omit such of a historical or permanent character as may have been given in previous reports.

Sec. 554. Any railroad corporation chartered by or organized under the laws of the United States, or of any State or Territory whose line of railroad shall reach or intersect the boundary line of this State at any point, may extend its railroad into this State from any such point or points to any place or places within the State, and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the State, or building any such branch road, or any such continuation, such corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch or continuation in the manner provided in Sections 270 and 271, of this Code, and file a copy of such record, certified by the president and secretary, in the office of the Secretary of the State, who shall record the same when presented for record. Thereupon such corporation shall have all the rights, powers, privileges, immunities, and franchises to make, maintain and operate such extension, and build, maintain and operate such branch or continuation which it would have had if it had been incorporated for such purposes, under the general laws of the State or Territory of Montana.

Sec. 555. Any two or more railroad corporations whose respective lines, not being parallel or competing lines, are wholly or partly within this State, whether chartered by or organized under the laws of the State or Territory of Montana, or of the United States, or of any other State or Territory, when their respective lines of road or any branch thereof so connect within this State that they may operate together as one property, may consolidate their capital stock franchises and property, and thereby become one corporation by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner following: Articles of agreement shall be entered into by and between such corporations under their respective corporate seals and the signatures of their respective presidents and secretaries containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including the name of the corporation resulting from such consolidation, the amount of its capital stock, the number and amount of shares thereof, the manner of retiring the shares of the capital stock of thecorporations so consolidated, or of converting the same into or exchanging it for the capital stock of such resultant corporation, the number which shall constitute the board of directors of such corporation and what officers it shall have, and the persons who shall constitute the first board of directors and officers thereof, their term of office, and the manner in which their successors shall be elected, which shall be according to the provisions of Section 284, of this Code, and such other matters as may be deemed necessary to perfect such consolidation and as may be agreed upon. Such articles of agreement shall, before the same shall be effectual, be assented to, approved or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders, or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least three-fifths in amount of the outstanding capital stock of such corporations respectively. A duplicate of such articles of agreement, together with a copy of the resolutions so adopted by the stockholders of such corporations assenting to, approving or ratifying the same, certified under the corporate seal and the signature of the secretary and verified by a sworn statement of the president and secretary of the corporation stating that such resolution was duly adopted by the vote in favor thereof of the holders of three-fifths in amount of the outstanding capital stock of the corporation at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the Secretary of State, and it shall be the duty of the secretary to record the same upon presentation for that purpose; and upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement, and as such shall be perpetual, and shall succeed to and have, own, possess, exercise and enjoy all the powers, rights, franchises, privileges, immunities and property of every name and nature possessed by the corporations so consolidated or to which they were entitled at the time of such consolidation, and shall be entitled to have, own, hold, exercise, possess and enjoy all the powers, rights, franchises, privileges and immunities which may at any time appertain to railroad corporations under the general laws of this State.

Sec. 556. Any railroad corporation whose line is wholly or partly within this State, or reaches the boundary line thereof, whether chartered by or organized under the laws of the State or Territory of Montana or of the United States, or of any other State or Territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises and all other property or appurtenances thereto; *Provided*, The railroad or line of railroad so leased or purchased is continuous of or connected with its own line and not a parallel or competing line. Before any such lease or purchase shall be effectual it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders by the holders of three-fifths in amount of all the outstanding capital stock of the company; and any such railroad corporation, whether chartered by or organized under the laws of the State or Territory of Montana or of the United States, or of any other State or Territory, may take, purchase, hold, sell and dispose of, or guarantee the payment of the capital stock, bonds and securities of any other railroad corporation whose line of railroad within this State is continuous of or connects with its own line. Leases heretofore made in conformity to the provisions of this Chapter shall, when ratified as herein provided, be held valid in like manner as if made by authority thereof.

Sec. 557. Any railroad corporation whose line is wholly or partly within this State, whether chartered by or organized under the laws of the State or Territory of Montana or of the United States, or of any other State or Territory, shall have authority and power to make, issue, negotiate and deliver its bonds, securities or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities or obligations, and the interest thereon, may make, execute and deliver such mortgages or deeds of trust upon all or any part of its property, income and franchises, as the board of directors may determine or direct; and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be and remain a valid lien upon the property, rights, and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights and franchises owned or possessed by the corporation at the time of its execution, irrespective of the law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held and enforced in the same manner as mortgages of real estate; and the record thereof in the office of the Secretary of State shall be notice of its existence and contents to all persons, without any further record thereof and it shall be the duty of the secretary to record in his office any such mortgage or deed of trust, when presented for tha purpose.

Sec. 558. A judgment against any railroad corporation fo any injury to person or property, or for material furnished, o work or labor done upon any of the property of such corporation, shall be a lien within the county where recovered on th property of such corporation, and such lien. shall be prior an superior to the lien of any mortgage or trust deed provide for in this Chapter.

CHAPTER II.

RAILROAD EQUIPMENTS AND ROLLING STOCK.

Section 563. Conditional sale valid.
" *564. Contract to be recorded.*
" *565. Chattel mortgage.*
" *566. Satisfaction.*

Sec. 563. In all cases where railroad equipment and rolling stock may have been, or shall be sold, to any person, firm, or corporation, to be paid for, in whole or in part, in installments, or shall be leased, rented, hired, or delivered, on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring, or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer, or deliverer of the same until the agreed upon price, or rent for such property shall have been fully paid, such condition in regard to title so remaining in the vendor, lessor, renter, hirer, or deliverer, until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors; *Provided*, The term during which the installments or rent are to be paid, shall not exceed ten years, and such contract shall be in writing, duly executed, acknowledged, and recorded, as hereinafter provided.

Sec. 564. Such contract shall be recorded in the office of the Secretary of State, and in the office of the county clerk of the county in which is located the principal office or place of business of such vendee or lessee, and on each locomotive or car that may have been so sold or leased, the name of the vendor, or lessor, or assignee of the vendor or lessor, shall be marked, followed by the word "Owner," or "Lessor," as the case may be.

Sec. 565. Any mortgage of personal property which constitutes the equipment, or part of the equipment, of any railroad company, may be recorded as provided in Section 564, of this Chapter, and if the same is *bona fide* the lien thereby created shall be good for all intents and purposes whatever, for such length of time as therein provided, not exceeding said period of ten years.

Sec. 566. Upon payment in full of the purchase price and the performance of the terms and conditions stipulated in any such contract, a declaration to that effect shall be made by the vendor, or his assignee, which declaration may be made on the margin of the record of the contract, attested by the Secretary of State, or county clerk, as the case may be, or the satisfaction may be made by a separate instrument, which shall be acknowledged and recorded in the offices in which the original contract was recorded, and thereupon the Secretary of State and county clerk shall write in the margin of the record the word "Satisfied," together with the date of sat faction, and the page, and book of record of the declaration the satisfaction.

CHAPTER III.

LIVE STOCK KILLED OR INJURED BY RAILROADS.

Section 569. Fences, damages.
" *570. Liable for injury from negligence.*
" *571. Right of way to be kept clear from dead gr*
" *572. Stock killed to be designated in book.*
" *573. Penalty.*
" *574. Affidavit of ownership and value.*
" *575. Company may deposit value of animal.*
" *576. Penalty for driving animals upon track.*
" *577. Carcass and hide of animal.*

Sec. 569. Railroad corporations must make out and ma tain a good and sufficient fence on either or both sides of th track and property. In case they do not make and maint such fence, if their engine or cars shall kill or maim any cat or other domestic animals upon their line of road which pas through or along the property thereof, they must pay to t owner of such cattle or other domestic animals a fair mark price for the same, unless it occurred through the neglect fault of the owner of the animal so killed or maimed. R road corporations paying to the owner of the land through along which their land is located an agreed price for maki and maintaining such fence or paying the cost of such fe with the award of damages allowed for the right of way such railroad, and relieved and exonerated from all claims damages arising out of the killing or maiming any animals persons who thus fail to construct and maintain such fen and the owners of such animals are responsible for any da age or loss which may accrue to such corporation from su animals being upon the railroad track, resulting from the no constructing of such fence, unless it is shown that such loss damage occurred through the negligence or fault of the co poration, its officers, agents, or employes.

Sec. 570. Every railroad corporation or company operati any railroad, or branch thereof, within the limits of th State, which shall negligently injure or kill any horse, ma gelding, filly, jack, jenny, or mule, or any cow, heifer, b ox, steer, or calf, or any other domestic animal, by runni any engine or engines, car or cars, over or against any su animal, shall be liable to the owner of such animal for t damages sustained by such owner by reason thereof. T killing or injury shall be *prima facie* evidence of negligen on the part of such corporation or company.

Sec. 571. It shall be the duty of all railroad corporations road companies operating any railroad within this State to ep their railroad track, and either side thereof, for a distance one hundred feet on each side of the track or road bed, so as it passes through any portion of this State, free from d grass, weeds or any dangerous or combustible material; any railroad company or corporation failing to keep its oad track and each side thereof free as above specified l be liable for any damages which may occur from fire ating from operating such railroad, and a neglect to com- with the provisions of this section in keeping free any oad track, and either side for a distance equal to the space ground covered by the grant of the right of way for the oad corporation or company, shall be *prima facie* evi- ce of negligence on the part of any such railroad corpora- or company. But no railroad corporation or company be required to keep free as above specified any land not rt of its right of way.

c. 572. It shall be the duty of any corporation, associa- company, person or persons owning, controlling or ating any railroad or branch thereof, in this State, to gnate some station on the line of the same in each county gh which it passes at which it shall keep a suitable book, within thirty days after the killing or injury of any animal nimals, cause to be entered therein, the date when, and e where the same were killed or injured, as near as may together with a description thereof, including the age, , and sex of the same and marks and brands upon the e as near as the same can be done, which said book shall ept for the inspection of any person or persons claiming e interested in the inspection thereof, and shall cause a e of the station so designated to be filed with the county of the county in which said station is situated.

c. 573. Any corporation, association, person or persons ning, controlling or operating such railroad or branch of, failing to designate said station, file said notice, keep book and make the entries as provided in the preceding n, shall be liable to the owner or owners of the animal imals so killed or injured, whether negligently done or nd the court or jury before whom any action is tried for covery of damages on account thereof, may, in its or discretion, render verdict and judgment for the amount e value of any such animal or animals so killed, or the nt of damages sustained by reason of any injury thereto.

c. 574. In case any corporation, association or com- person or persons, shall comply with the provisions of n 572, of this Chapter, it shall be the duty of the owner ners of any animal or animals, killed or injured as afore- r his agent, or their agent, within thirty days after in- tion shall have reached him or them of the killing or in- f such animal or animals, to make affidavit of such own-

ership and the market value of the animal or animals so kille
or the amount of damages occasioned by such injury, and de
liver the same to the person in charge of the said book or sta
tion so designated, and thereupon the said corporation, assoc
ation, company, person or persons, shall have fifty days withi
which to pay the amount claimed, and no action shall be inst
tuted for the recovery of the value of or damages to such an
mal or animals until the expiration of said time.

Sec. 575. If any corporation, association, company, perso
or persons, so owning, controlling, or operating any such rai
road or branch thereof, shall kill or injure any animal or an
mals as aforesaid, and shall tender to the owner or owner
thereof, or to his or their agent in that behalf, the amoun
which they shall deem to be the value thereof, or the damag
thereto, as the case may be; or if said railroad, corporatio
association, company, person or persons, shall deposit with th
Board of Stock Commissioners such amount for the owner o
owners thereof; and such owner or owners, or his or the
said agent shall refuse to accept the same in settlement thereo
then such owner or owners shall pay all costs incurred in an
action instituted, after such tender or deposit, to recover suc
value or damage, unless he or they shall recover therein mor
than the amount so tendered as aforesaid.

Sec. 576. If the owner or owners, or his or their duly au
thorized agent or agents, of any animal or animals heretofor
mentioned, shall drive the same upon the track of any suc
corporation, association, company, person or persons, with th
intention to injure it or them, and such animal or animals sha
be killed or injured, such owner or owners shall be liable fo
all injury or damage occasioned by reason of such act, an
shall be punished as provided in the Penal Code.

Sec. 577. In all cases where any corporation, associatio
company, person or persons, shall be liable to the owners of an
animal killed as provided in this Chapter, they shall be autho
ized to skin the same, and shall be entitled to the carcass an
hide thereof, unless the owner or owners thereof shall clai
the same, in which event the amount of the value there
shall be deducted from the amount of damages which wou
otherwise be due. But in case such corporation, associatio
company, person or persons, so entitled thereto, shall take sa
carcass and hide, they shall skin such animal or animals an
deposit the hide thereof at the station designated for keepin
the book and making the entries hereinbefore provided fo
during the space of sixty days, for the inspection of person
claiming to be interested therein.

CHAPTER IV.

BUSINESS, HOW CONDUCTED.

Section *585. Checks to be fixed to baggage.*
" *586. Duties of corporation.*
" *587. Corporation to pay damage for refusal.*
" *588. Accommodations.*
" *589. Printed regulations to be posted.*
" *590. Passengers refusing to pay fare.*
" *591. Officers to wear badge.*
" *592. Passenger tickets, how issued.*

Sec. 585. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employe of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employe of the railroad corporation, he may recover the value thereof from the corporation.

Sec. 586. Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation at the place of starting, at the junction of other railroads, and at siding or stopping places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare therefor.

Sec. 587. In case of refusal by such corporation or their agents so to take and transport any passengers or property or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

Sec. 588. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

Sec. 589. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

Sec. 590. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employes of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

Sec. 591. Every conductor, baggage master, engineer, brakeman, or other employe of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employe without such badge, has any authority to meddle or interfere with any passenger or property.

Sec. 592. Every railroad corporation must provide, and on being tendered the regular rates of fare, furnish to every person desiring a passage on their passenger cars a ticket which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased, to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

TITLE IX.

TELEGRAPH AND TELEPHONE CORPORATIONS.

Section 600. Right of way.
" *601. Construction and connection.*
" *602. Consolidation of competing lines forbidden.*

Sec. 600. A telegraph or telephone corporation, or a person, is hereby authorized to construct such telegraph or telephone line or lines from point to point, along and upon any of the public roads, by the erection of necessary fixtures, including posts, piers and abutments, necessary for the wires; but the same shall not incommode the public in the use of said roads or highways.

Sec. 601. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this State, and connect the same with other lines, and in case such persons or corporations cannot agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other, may be had in proceedings under Code of Civil Procedure, and the damages assessed, and the right of connection granted, as provided in the Code of Civil Procedure.

Sec. 602. No telegraph or telephone company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise any other competing line of telegraph or telephone.

TITLE X.

MINING CORPORATIONS.

Section 606. Transfer agencies.
" 607. Stock issued at transfer agencies.
" 608. Directors not to sell property.
" 609. Proceedings and certificate of meeting of stockholders.
" 610. Corporation dissolved.
" 611. Consolidation.

Sec. 606. Any corporation organized in this State for the purpose of mining or carrying on mining operations in or without this State, may establish and maintain agencies in other States of the United States, for the transfer and issuing of its stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this State. The agencies must be governed by the by-laws and the directors of the corporation.

Sec. 607. All stock of any such corporation issued at a transfer agency must be signed bv the president and secretary of the corporation and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancellation.

Sec. 608. The board of directors of any mining corporation organized under the provisions of this Code, shall not have power to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground, quartz mills, smelters, concentrators or reduction works of such corporation, unless they shall have first called a meeting of the stockholders of such corporation in the manner prescribed in Section 345, of this Code, for the purpose of submitting to the stockholders of such corporation the proposition so to sell, lease, mortgage or otherwise dispose of the property of such corporation or some portion thereof. The notice so required to be published and sent to each stockholder shall distinctly specify each particular tract or piece of property so to be sold, leased, mortgaged or otherwise disposed of and the particular disposition to be made thereof.

Sec. 609. If at the time and place specified in the notice provided for in the preceding section, stockholders shall appear in person or by proxy, representing not less than three-fourths of all the shares of stock of the corporation, they may organize by choosing one of their number chairman of the meeting, and also a suitable person for secretary, and proceed to vote on the proposition mentioned in said notice. If there are distinct pieces or parcels of property embraced in the proposition, each separate piece of property capable of being disposed of in one parcel without material injury to the remainder shall be voted on separately. If on canvassing the votes it shall be found that at least two-thirds of all the shares of the capital stock of such corporation have been voted in favor of selling, leasing, mortgaging or otherwise disposing of a given piece or the whole of said mining property, then the chairman and secretary of such meeting shall make a certificate showing the total number of shares of the capital stock of such corporation represented in such meeting and by whom voted; the number of shares voted in favor of the proposition and the number of shares voted against the same. Such certificate shall be signed by the chairman, countersigned by the secretary, and verified by their oaths, taken before some officer qualified to administer oaths. Such verification shall be to the effect that the matters and things therein contained are true, and that the meeting at which such proceedings were had was called and held in pursuamce of law, to the best of their knowledge, information and belief. Such certificate shall be spread at length on the record of stockholders' meetings of such corporation, and a copy thereof under the seal of said corporation, and attested by its president and secretary, and duly acknowledged shall be recorded in the office of the county clerk of every county wherein any of such property is situated.

Sec. 610. If a sale shall be made as above provided of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up as provided for in other cases of the dissolution of corporations.

Sec. 611. It shall be lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this State, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors of such corporations so desiring to consolidate their interests: but no such consolidation shall take place without the written consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation shall, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same shall be given, by advertising for one month in at least one newspaper published in the county where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporations shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original articles of corporation of any of said corporations shall be filed, and a copy thereof shall be filed in the office of the Secretary of State; such certificate shall be signed by a majority of each board of directors of the original corporations, and it shall be their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said mining corporations so consolidated to elect a board of directors for the consolidated mining corporation, for the year then next ensuing. The said certificate shall also contain all the requirements prescribed by this Code.

TITLE XI.

FOREIGN CORPORATIONS.

Section 615. File copy of charter and appoint agent.
" *616. Consent of agent, etc.*
" *617. Failure to comply.*
" *618. Report to be filed.*

Sec. 615. All foreign corporations or joint stock companies, organized under the laws of any State, or of the United States, or of any foreign government, shall, before doing business within this State, file in the office of the Secretary of State, and in the office of the county clerk of the county wherein they intend to carry on business, a duly authenticated copy of their charter, or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing:

1. The name of such corporation and the location of its principal office or place of business without this State; and if it is to have any place of business or principal office within this State, the location thereof.

2. The amount of capital stock.

3. The amount of its capital stock actually paid in, in money.

4. The amount of its capital stock paid in, in any other way, and in what.

5. The amount of the assets of the corporation and of what the assets consist, with the actual cash value thereof.

6. The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint stock company shall also file, at the same time, and in the same offices, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this State, upon all causes of action arising against it in this State, and that service of process may be made upon some person, a citizen of this State, whose name and place of residence shall be designated in such certificate, and such service when so made upon such agent shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company.

Sec. 616. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.

Sec. 617. If any foreign corporation shall attempt or commence to do business in this State without having first filed said statements, certificates and consents, required by this Chapter, it shall forfeit to the people of this State the sum of twenty-five dollars for every day it shall so neglect to file the same, and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statements, certificates or consents, shall be void at the election of the other party thereto. It shall be the duty of the county attorney of any county in which the business of such corporation shall be carried on, to sue for and recover, in the name of the State, the penalty above provided, and the same, when so recovered, shall be paid into the treasury of such county for the use of the common schools therein.

Sec. 618. Every such corporation shall semi-annually, and within twenty days from the first days of January and July of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in Section 615, of this Title, which report shall be filed in the office of the county clerk of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the Secretary of State.

DIVISION SECOND.

Part I. Property in general.
" *II. Real or immovable property.*
" *III. Personal or movable property.*
" *IV. Acquisition of property.*

PART I.

PROPERTY IN GENERAL.

Title I. Nature of property.
" *II. Ownership.*
" *III. General definitions.*

TITLE I.

NATURE OF PROPERTY.

Section 625. Property, what.
" *626. In what property may consist.*
" *627. Wild animals.*
" *628. Real and personal.*
" *629. Real property.*
" *630. Land.*
" *631. Fixtures.*
" *632. Fixtures attached to mines.*
" *633. Appurtenances.*
" *634. Personal property.*

Sec. 625. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called property.

Sec. 626. There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill, as the composition of an author; the good will of a business; trade marks and signs, and of rights created or granted by statute.

Sec. 627. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken and held in the possession, or disabled and immediately pursued.

Sec. 628. Property is either:

1. Real or immovable; or,
2. Personal or movable.

Sec. 629. Real or immovable property consists of:

1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law.

Sec. 630. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.

Sec. 631. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs, or imbedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as, by means of cement, plaster, nails, bolts, or screws.

Sec. 632. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine.

Sec. 633. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or water course, or of a passage for light, air, or heat from or across the land of another.

Sec. 634. Every kind of property that is not real is personal.

TITLE II.

OWNERSHIP.

Chapter I. Owners.
" II. Modifications of ownership.
" III. Right of owners.
" IV. Termination of ownership.

CHAPTER I.

OWNERS.

Section 638. Owner.
" 639. Property of the State.

Sec. 638. All property has an owner, whether that owner is the State, and the property public, or the owner an indivdual, and the property private. The State may also hold property as a private proprietor.

Sec. 639. The State is the owner of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated or granted to the State, and all property of which there is no other owner.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

Article I. Interests in property.
" *II. Conditions of ownership.*
" *III. Restraints upon alienation.*
" *IV. Accumulations.*

ARTICLE I.

INTERESTS IN PROPERTY.

Section 645. Ownership, absolute or qualified.
" *646. When absolute.*
" *647. When qualified.*
" *648. Several ownership, what.*
" *649. Ownership of several persons.*
" *650. Joint interest, what.*
" *651. Partnership interest, what.*
" *652. Interest in common, what.*
" *653. What interests are in common.*
" *654. Interests as to time.*
" *655. Present interest, what.*
" *656. Future interest, what.*
" *657. Perpetual interest, what.*
" *658. Limited interest, what.*
" *659. Kinds of future interests.*
" *660. Vested interests.*
" *661. Contingent interests.*
" *662. Two or more future interests.*
" *663. Certain future interests not to be void.*
" *664. Posthumous children.*
" *665. Qualities of expectant estates.*
" *666. Same.*
" *667. Interests in real property.*
" *668. Same.*
" *669. What future interests are recognized.*

Sec. 645. The ownership of property is either:
1. Absolute; or,
2. Qualified.

Sec. 646. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

Sec. 647. The ownership of property is qualified:

1. When it is shared with one or more persons.
2. When the time of enjoyment is deferred or limited.
3. When the use is restricted.

Sec. 648. The ownership of property by a single person is designated as a sole or several ownership.

Sec. 649. The ownership of property by several persons is either:

1. Of joint interests.
2. Of partnership interests.
3. Of interests in common.

Sec. 650. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

Sec. 651. A partnership interest is one owned by several persons in partnership, for partnership purposes.

Sec. 652. An interest in common is one owned by several persons, not in joint ownership or partnership.

Sec. 653. Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in Section 650.

Sec. 654. In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

Sec. 655. A present interest entitles the owner to the immediate possession of the property.

Sec. 656. A future interest entitles the owner to the possession of the property only at a future period.

Sec. 657. A perpetual interest has a duration equal to that of the property.

Sec. 658. A limited interest has a duration of less than that of the property.

Sec. 659. A future interest is either:

1. Vested; or,
2. Contingent.

Sec. 660. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest.

Sec. 661. A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

Sec. 662. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Sec. 663. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

Sec. 664. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

Sec. 665. Future interests pass by succession, will, and transfer, in the same manner as present interests.

Sec. 666. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

Sec. 667. In respect to real or immovable property, the interests mentioned in this Chapter are denominated estates and are specially named and classified in Part II., of this Division.

Sec. 668. The names and classification of interests in real property have only such application to interests in personal property as is in this Division of the Code expressly provided.

Sec. 669. No future interest in property is recognized by the law, except such as is defined in this division of the Code.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

Section 672. Fixing the time of enjoyment.
" 673. Conditions.
" 674. Certain conditions precedent void.
" 675. Conditions restraining marriage void.
" 676. Conditions restraining alienation void.

Sec. 672. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

Sec. 673. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

Sec. 674. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

Sec. 675. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not effect limitations where intent was not to forbid marriage, but only to give the use until marriage.

Sec. 676. Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

Section 680. How long it may be suspended.
" *681. Future interests void, which suspend power of alienation.*
" *682. Leases of agricultural lands, for over ten years, void.*
" *683. Leases of city lots, for over twenty-five years, void.*

Sec. 680. The absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in Section 723.

Sec. 681. Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this Chapter. Such power of alienation is suspended, when there are no persons in being by whom an absolute interest in possession can be conveyed.

Sec. 682. No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid.

Sec. 683. No lease or grant of any town or city lot, for a longer period than twenty-five years, in which shall be reserved any rent or service of any kind, shall be valid.

ARTICLE IV.

ACCUMULATIONS.

Section 686. Dispositions of income.
" *687. Accumulations, when void.*
" *688. Accumulation of income.*
" *689. Other directions when void in part.*
" *690. Application of income, to support, etc., of minor.*

Sec. 686. Dispositions of the income of the property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this Title in relation to future interests.

Sec. 687. All directions for the accumulation of the income of property, except such as are allowed by this Title, are void.

Sec. 688. An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this Title permitted for the vesting of future interests and during the minority of the beneficiaries, and terminate at the expiration of such minority.

Sec. 689. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

Sec. 690. When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund.

CAAPTER III.

RIGHTS OF OWNERS.

Section 694. Increase of property.
" 695. In certain cases who entitled to income of property.

Sec. 694. The owner of a thing also owns all its products and accessions.

Sec. 695. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the person presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

Section 700. Future interests, when defeated.
" 701. Same.
" 702. Future interests, when not defeated.
" 703. Same.

Sec. 700. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

Sec. 701. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

Sec. 702. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

Sec. 703. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner, and to the same extent, as if the precedent interest had continued to the same period.

TITLE III.

GENERAL DEFINITIONS.

Section 706. Income, what.
" *707. Time of creation, what.*

Sec. 706. The income of property, as the term is used in this Part of the Code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

Sec. 707. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition or interest, within the meaning of this Part of the Code.

PART II.

REAL OR IMMOVABLE PROPERTY.

Title I. General provisions.
" *II. Estates in real property.*
" *III. Rights and obligations.*
" *IV. Uses and trusts.*
" *V. Powers.*

TITLE I.

GENERAL PROVISIONS.

Section 710. Real property, how governed.

Sec. 710. Real property within this State is governed by the law of this State, except where the title is in the United States.

TITLE II.

ESTATES IN REAL PROPERTY.

Chapter I. Estates in general.
“ *II. Termination of estates.*
“ *III. Servitudes.*

CHAPTER I.

ESTATES IN GENERAL.

Section 712. Enumeration of estates.
“ *713. What estate a fee simple.*
“ *714. Conditional fees and estates tail abolished.*
“ *715. Certain remainders valid.*
“ *716. Freeholds, chattels real, chattel interests.*
“ *717. Estates for life of a third person, when a freehold, etc.*
“ *718. Future estates, what.*
“ *719. Reversions.*
“ *720. Remainders.*
“ *721. Limitations of chattels real.*
“ *722. Suspension by trust.*
“ *723. Contingent remainder in fee.*
“ *724. Remainders, future and contingent estates, how created.*
“ *725. Limitation of successive estates for life.*
“ *726. Remainder upon estates for life of third person.*
“ *727. Contingent remainder on a term of years.*
“ *728. Remainder of estates for life.*
“ *729. Remainder upon a contingency.*
“ *730. Heirs of a tenant for life, when to take as purchasers.*
“ *731. Construction of certain remainders.*
“ *732. Effect of power of appointment.*

Sec. 712. Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance or perpetual estates.
2. Estates for life.
3. Estates for years; or,
4. Estates at will.

Sec. 713. Every estate of inheritance is a fee, and such estate, when not defeasible or conditional, is a fee simple, or an absolute fee.

Sec. 714. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute.

Sec. 715. Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession on the death of the first taker, without issue living at the time of his death.

Sec. 716. Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

Sec. 717. An estate, during the life of a third person, whether limited to heirs or otherwise, is a freehold.

Sec. 718. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

Sec. 719. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

Sec. 720. When a future estate, other than reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

Sec. 721. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

Sec. 722. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of Section 680.

Sec. 723. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the person to whom the first remainder is limited, die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

Sec. 724. Subject to the rules of this Title, and of Part I., of this Division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee upon a contingency, which, if it should occur, must happen within the period prescribed in this Title.

Sec. 725. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

Sec. 726. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term of years, unless it is for the whole residue of such term.

Sec. 727. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

Sec. 728. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Sec. 729. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

Sec. 730. When a remainder is limited to the heir or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

Sec. 731. When a remainder of an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration by lapse of time, of such term of years.

Sec. 732. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

CHAPTER II.

TERMINATION OF ESTATES.

Section 736. Tenancy at will may be terminated by notice.
" *737. Effect of notice.*
" *738. Re-entry, when and how to be made.*
" *739. Summary proceedings in certain cases, how provided for.*
" *740. Notice not necessary before action.*

Sec. 736. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by the Code of Civil Procedure, to remove from the premises within a period of not less than one month, to be specified in the notice.

Sec. 737. After such notice has been served and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

Sec. 738. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such reentry may be made at any time after the right has accrued upon three days' notice, as provided in the Code of Civil Procedure.

Sec. 739. Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in the Code of Civil Procedure.

Sec. 740. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time, in the District Court, after the right to re-enter has accrued, without the notice prescribed in Section 738.

CHAPTER III.

SERVITUDES.

Section 745. Servitudes attached to land.
" *746. Servitudes not attached to land.*
" *747. Designation of estates.*
" *748. By whom grantable.*
" *749. By whom held.*
" *750. Extent of servitudes.*
" *751. Apportioning easements.*
" *752. Rights of owner of future estate.*
" *753. Actions by owner and occupant of dominant tenement.*
" *754. Actions by owner of servient tenement.*
" *755. How extinguished.*

Sec. 745. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals, and other things.
6. The right of transacting business upon land.
7. The right of conducting lawful sports upon land.
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land,
9. The right of receiving water from or discharging the same upon land.
10. The right of flooding land.
11. The right of having water flow without diminution or disturbance of any kind.

12. The right of using a wall as a party wall.

13. The right of receiving more than natural support from adjacent land or things affixed thereto.

14. The right of having the whole of a division fence maintained by coterminous owner.

15. The right of having public conveyances stopped, or of stopping the same on land.

16. The right of a seat in church.

17. The right of burial.

Sec. 746. The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1. The right of pasture, and of fishing and taking game.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking water, wood, minerals, or other things.

Sec. 747. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

Sec. 748. A servitude can be created only by one who has a vested estate in the servient tenement.

Sec. 749. A servitude thereon cannot be held by the owner of the servient tenement.

Sec. 750. The extent of a servitude is determined by the terms of the grant, or of the nature of the enjoyment by which it was acquired.

Sec. 751. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

Sec. 752. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

Sec. 753. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

Sec. 754. The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

Sec. 755. A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person.
2. By the destruction of the servient tenement.
3. By the performance of any act upon either tenement, by

the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,

4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

Chapter I. Rights of owners.
" *II. Obligations of owners.*

CHAPTER I.

RIGHTS OF OWNERS.

Article I. Incidents of ownership.
" *II. Boundaries.*

ARTICLE I.

INCIDENTS OF OWNERSHIP.

Section 760. Rights of tenant for life.
" *761. Rights of tenant for years, etc.*
" *762. Same.*
" *763. Rights of grantees of rents and reversion.*
" *764. Liability of assigns of lessee.*
" *765. Rights of lessees and their assignees, etc.*
" *766. Remedy on leases for life.*
" *767. Rent dependent on life.*
" *768. Remedy of reversioners, etc.*
" *769. Terms of lease may be changed by notice.*

Sec. 760. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

Sec. 761. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and a tenant at will or for an indefinite term, may cultivate and harvest the crops growing at the end of his tenancy.

Sec. 762. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

Sec. 763. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or of any waste or cause of forfeiture, as his grantor or devisor might have had.

Sec. 764. Whatever remedies the lessor of any real property has against his intermediate lessee for the breach of any agreement in the lease, or for recovery of the possession he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises.

Sec. 765. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

Sec. 766. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

Sec. 767. Rent dependent on the life of a person may be recovered after as well as before his death.

Sec. 768. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

Sec. 769. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

ARTICLE II.

BOUNDARIES.

Section 771. *Rights of owner.*
" 772. *Boundaries by water.*
" 773. *Boundaries by ways.*
" 774. *Lateral and subjacent support.*
" 775. *Trees whose trunks are wholly on land of one.*
" 776. *Line trees.*

Sec. 771. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

Sec. 772. Except where the grant under which the land is held indicates a different intent, the owner of the land when it borders upon a navigable lake or stream takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

Sec. 773. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

Sec. 774. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

Sec. 775. Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

Sec. 776. Trees whose trunks stand pa[illegible] land of two or more coterminous owners belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

Section 780. Duties of tenant for life.
" *781. Monuments and fences.*

Section 780. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefitting the whole inheritance.

Sec. 781. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them.
2. The fences between them, unless one of them chooses to let his land lie without fencing, in which case, if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

TITLE IV.

USES AND TRUSTS.

Section 785. What uses and trusts may exist.
" *786. Trusts must be in writing.*
" *787. Transfer to one for money paid by another.*
" *788. Purchasers protected.*

Section 789. For what purposes express trusts may be created.
" 790. Profits of land liable to creditors in certain cases.
" 791. Powers, execution of.
" 792. Trustees of express trusts to have whole estate.
" 793. Author of trust may devise, etc.
" 794. Title of grantor of trust property.
" 795. Interests remaining in grantor of express trust.
" 796. Powers over trust of party interested.
" 797. Effect of omitting trust in conveyance.
" 798. Certain sales, etc., by trustees, void.
" 799. When estate of trustee to cease.

Sec. 785. Uses and trusts in relation to real property are those only which are specified in this Title.

Sec. 786. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing.

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law.

Sec. 787. When a transfer of real property is made to one person, and the consideration thereof is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

Sec. 788. No implied or resulting trust can prejudice the rights of a purchaser or incumbrancer of real property for value and without notice of the trust.

Sec. 789. Express trusts may be created for any of the following purposes:

1. To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of Title II., of this Part; or,

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same Title.

Sec. 790. When a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

Sec. 791. Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

Sec. 792. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Sec. 793. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

Sec. 794. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

Sec. 795. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors.

Sec. 796. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, cannot transfer or in any manner dispose of his interest in such trust.

Sec. 797. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration.

Sec. 798. Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

Sec. 799. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

TITLE V.

POWERS.

Section 810. Definition.
" *811. Who to execute powers.*
" *812. Married women.*

Section 813. Same.
" *814. How executed.*

Sec. 810. A power, as the term is used in this Title, is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

Sec. 811. A power cannot be executed by any person not capable of disposing of real property.

Sec. 812. A married woman may execute a power during her marriage, without the concurrence of her husband, unless otherwise prescribed by the terms of the power.

☐Sec. 813. No power can be executed by a married woman before she attains her majority.

Sec. 814. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner.

PART III.

PERSONAL OR MOVABLE PROPERTY.

Title I. Personal property in general.
" *II. Particular kinds of personal property.*

TITLE I.

PERSONAL PROPERTY IN GENERAL.

Section 820. By what law governed.

Sec. 820. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

Chapter I. Things in action.
" *II. Products of the mind.*
" *III. Other kinds of personal property.*

CHAPTER I.

THINGS IN ACTION.

Section 825. Things in action defined.
" *826. Transfer and survivorship.*

Sec. 825. A thing in action is a right to recover money or other personal property by a judicial proceeding.

Sec. 826. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

CHAPTER II.

PRODUCTS OF THE MIND.

Section 830. How far the subject of ownership.
" *831. Joint ownership.*
" *832. Transfer.*
" *833. Effect of publication.*
" *834. Subsequent inventor, author, etc.*
" *835. Private writings.*

Sec. 830. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

Sec. 831. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions.
2. If it is not single, in proportion to the contribution of each.

Sec. 832. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

Sec. 833. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this State is concerned.

Sec. 834. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

Sec. 835. Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER III.

OTHER KINDS OF PERSONAL PROPERTY.

Section 840. Trade marks.
" *841. Good will of business.*
" *842. Same.*
" *843. Title of deeds.*

Sec. 840. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade mark, any form, symbol, or name, which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

Sec. 841. The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

Sec. 842. The good will of a business is property, transferable like any other.

Sec. 843. Instruments essential to the title of real property, and which are not kept in a public office as a record pursuant to law, belong to the person in whom for the time being, such title may be vested, and pass with the title.

PART IV.

ACQUISITION OF PROPERTY.

Title I. Modes in which property may be acquired.
" *II. Occupancy.*
" *III. Accession.*
" *IV. Transfer.*
" *V. Homesteads.*
" *VI. Wills.*
" *VII. Succession.*
" *VIII. Water rights.*

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

Section 850. Property, how acquired.

Sec. 850. Property is acquired by:

1. Occupancy.
2. Accession.

3. Transfer.
4. Will; or,
5. Succession.

TITLE II.

OCCUPANCY.

Section 855. Simple occupancy.
" 856. Prescription.

Sec. 855. Occupancy for any period confers a title sufficient against all except the State, and those who have title by prescription, accession, transfer, will, or succession.

Sec. 856. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

TITLE III.

ACCESSION.

Chapter I. To real property.
" II. To personal property.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

Section 860. Fixtures.
" 861. Alluvion.
" 862. Sudden removal of bank.
" 863. Islands, in navigable streams.
" 864. In unnavigable streams.
" 865. Islands formed by division of stream.
" 866. What fixtures tenant may remove.

Sec. 860. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in Section 866, belongs to the owner of the land, unless he chooses to require the former to remove it.

Sec. 861. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

Sec. 862. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

Sec. 863. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the State, if there is no title or prescription to the contrary.

Sec. 864. An island, or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

Sec. 865. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

Sec. 866. A tenant may remove from the demised premises any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

Section 870. Accession by uniting several things.
" *871. Principal part, what.*
" *872. Same.*
" *873. Uniting materials and workmanship.*
" *874. Inseparable materials.*
" *875. Materials of several owners.*
" *876. Willful trespassers.*
" *877. Owner may elect between the thing and its value.*
" *878. Wrongdoer liable in damages.*

Sec. 870. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

Sec. 871. That part is deemed to be the principal to which the other has been united only for the use, ornament, or completion of the former, unless the later is the more valuable, and has been united without the knowledge of its owner, who may, in the later case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

Sec. 872. If neither part can be considered the principal, within the rule prescribed by the last section, the more valuable, or if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

Sec. 873. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

Sec. 874. Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

Sec. 875. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

Sec. 876. The foregoing sections of this Article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

Sec. 877. In all cases where one whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof; or, where he is entitled to the product, the value thereof in place of the product.

Sec. 878. One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this Chapter.

TITLE IV.

TRANSFER.

Chapter I. Transfers in general.
" *II. Transfer of real property.*
" *III. Transfer of personal property.*
" *IV. Recording transfers of real property.*
" *V. Unlawful transfers.*

CHAPTER I.

TRANSFERS IN GENERAL.

Article I. Definition of transfer.
" II. What may be transferred.
" III. Mode of transfer.
" IV. Interpretation of grants.
" V. Effect of transfer.

ARTICLE I.

DEFINITION OF TRANSFER.

Section 885. Transfer, what.
" 886. Voluntary transfer.

Sec. 885. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

Sec. 886. A voluntary transfer is an executed contract subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

Section 888. What may be transferred.
" 889. Possibility.
" 890. Right of re-entry can be transferred.
" 891. Owner ousted of possession may transfer.

Sec. 888. Property of any kind may be transferred, except as otherwise provided by this Article.

Sec. 889. A mere possibility, not coupled with an interest, cannot be transferred.

Sec. 890. A right of re-entry, or of re-possession for breach of condition subsequent, can be transferred.

Sec. 891. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

ARTICLE III.

MODE OF TRANSFER.

Section 895. When oral.
" 896. Grant, what.
" 897. Delivery necessary.
" 898. Date.
" 899. Delivery to grantee is necessarily absolute.

Section 900. Delivery in escrow.
" 901. Surrendering or canceling grant does not reconvey.
" 902. Constructive delivery.

Sec. 895. A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

Sec. 896. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two Articles, includes all these instruments, unless it is specially applied to real property.

Sec. 897. A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

Sec. 898. A grant duly executed is presumed to have been delivered at its date.

Sec. 899. A grant cannot be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery is made.

Sec. 900. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

Sec. 901. Re-delivering a grant of real property to the grantor, or cancelling it, does not operate to re-transfer the title.

Sec. 902. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

ARTICLE IV.

INTERPRETATION OF GRANTS.

Section 906. Grants, how interpreted.
" 907. Limitations, how controlled.
" 908. Recitals, when resorted to.
" 909. Interpretation against grantor.
" 910. Irreconcilable provisions.
" 911. Meaning of "heirs" and "issue," in certain remainders.
" 912. Words of inheritance unnecessary.

Sec. 906. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this Article.

Sec. 907. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

Sec. 908. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

Sec. 909. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor.

Sec. 910. If several parts of a grant are absolutely irreconcilable, the former part prevails.

Sec. 911. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or, in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

Sec. 912. Words of inheritance or succession are not requisite to transfer a fee in real property.

ARTICLE V.

EFFECT OF TRANSFER.

Section 915. What title passes.
" *916. Incidents.*
" *917. Grant may enure to the benefit of stranger.*

Sec. 915. A transfer vests in the transferee all the actual title to the thing transferred which the tranferer then has, unless a different intention is expressed or is necessarily implied.

Sec. 916. The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

Sec. 917. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

Article I. Mode of transfer.
" *II. Effect of transfer.*

ARTICLE I.

MODE OF TRANSFER.

Section 925. Requisites for transfer of certain estates.
" *926. Form of grant.*
" *927. Grant by married women, how acknowledged.*
" *928. Power of attorney of married women, how acknowledged.*
" *929. Attorney in fact, how must execute for principal.*
" *930. Former name of owner.*

Sec. 925. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Sec. 926. A grant of an estate in real property may be made in substance as follows:

1. "I, A. B., in consideration of——dollars now paid, grant to C. D. all the real property situated in (insert name of county) county, State of Montana, bounded (or described) as follows: (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, 'The Norris ranch').

"Witness my hand this (insert day) day of (insert month) 18——. A. B."

Sec. 927. No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed by Sections 994 and 999.

Sec. 928. A power of attorney, of a married woman, authorizing the execution of an instrument transferring an estate in her separate real property, has no validity for that purpose until acknowledged by her in the manner provided in Sections 994 and 999.

Sec. 929. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

Sec. 930. Any person in whom the title of real estate is vested, who shall afterwards, from any cause, have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate, and a failure to comply with the provisions of this section, shall subject any such person to a penalty of fifty dollars, to be collected by the county attorney of the county in which the real estate is situated, and by him paid into the treasury of said county for the benefit of the common schools thereof.

ARTICLE II.

EFFECT OF TRANSFER.

Section 935. What easements pass with property.
" 936. When fee simple title is presumed to pass.
" 937. Subsequently acquired title passes by operation of law.
" 938. Grant, how far conclusive on purchasers.
" 939. Conveyances by owner for life or for years.
" 940. Grant made on condition subsequent.

Section 941. Grant on condition precedent.
" 942. Attornment of tenant when unnecessary.
" 943. Boundary by highway, what passes.
" 944. Implied covenants.
" 945. What the term "incumbrances" embraces.
" 946. Lineal and collateral warranties abolished.

Sec. 935. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

Sec. 936. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

Sec. 937. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

Sec. 938. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

Sec. 939. A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

Sec. 940. When a grant is made upon condition subsequent, [illegible] subsequently defeated by the non-performance of the [illegible] the person otherwise entitled to hold [illegible] the property to the grantor [illegible] for record.

Sec. 944. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Sec. 945. The term "incumbrances" includes, taxes, assessments, and all liens upon real property.

Sec. 946. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

CHAPTER III.

TRANSFER OF PERSONAL PROPERTY.

Article I. Mode of transfer.
" II. What operates as a transfer.
" III. Gifts.

ARTICLE I.

MODE OF TRANSFER.

[illegible] *When must be in writing.*
[illegible]

[illegible] can be transferred [illegible]
[illegible]

Sec. 955. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

Sec. 956. Title is transferred by an executory agreement for the sale or exchange of personal property only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the Chapter upon Offer of Performance.

Sec. 957. Where the possession of personal property together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers the such buyer the title of the former owner, though he may be entitled to rescind, and does rescind, the transfer made by him.

ARTICLE III.

GIFTS.

Section 960. *Gifts defined.*
" 961. *Gifts, how made.*
" 962. *Gift, how revocable.*
" 963. *Gift in view of death, what.*
" 964. *When gift presumed to be in view of death.*
" 965. *Revocation of gift in view of death.*
" 966. *Effect of will upon gift.*
" 967. *When treated as legacy.*

Sec. 960. A gift is a transfer of personal property, made voluntarily, and without consideration.

Sec. 961. A verbal gift is not valid unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

Sec. 962. A gift, other than a gift in view of death, cannot be revoked by the giver.

Sec. 963. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

Sec. 964. A gift made during the last illness of the giver, or under circumstances which would impress him with an expectation of speedy death, is presumed to be a gift in view of death.

Sec. 965. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time.

Sec. 966. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

Sec. 967. A gift in view of death must be treated as a legacy, so far as relates to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

Article I. What may be recorded.
" *II. Mode of recording.*
" *III. Proof of acknowledgments of instruments.*
" *IV. Effect of recording, or of the want thereof.*

ARTICLE I.

WHAT MAY BE RECORDED.

Section 970. What may be recorded.
" *971. Judgments may be recorded without acknowledgment.*
" *972. Letters patent may be recorded without acknowledgment.*
" *973. Instruments must be acknowledged, except, etc.*
" *974. Same.*
" *975. Transfers in trust, etc.*
" *976. Fees of recorder to be indorsed.*

Sec. 970. Any instrument or judgment affecting the title to or possession of real property may be recorded under this Chapter.

Sec. 971. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

Sec. 972. Letters patent from the United States, or from the State of Montana, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have *prima facie* the same force and effect as the original, for title or for evidence, until the said original letters patent be recorded.

Sec. 973. Before an instrument can be recorded, unless it belongs to the class provided for in either Sections 971, 972, 1010, or 1011, its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in Sections 1006 and 1007, and the acknowledgment or proof certified in the manner prescribed by Article III., of this Chapter.

Sec. 974. An instrument, proved and certified pursuant to Sections 1006 and 1007, may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

Sec. 975. Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the Titles on the special relation of debtor and creditor and the Chapter on mortgages, respectively.

Sec. 976. The county clerk must in all cases indorse the amount of his fee for recording on the instrument recorded.

ARTICLE II.

MODE OF RECORDING.

Section 980. In what office.
" 981. Instrument, when deemed recorded.
" 982. Books of record.
" 983. Duties of recorder.

Sec. 980. Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

Sec. 981. An instrument is deemed to be recorded, when, being duly acknowledged or proved, and certified, it is deposited in the county clerk's office with the proper officer for record.

Sec. 982. Grants, absolute in terms, are to be recorded in one set of books, and mortgages, and securities in the nature of mortgages, in another.

Sec. 983. The duties of county clerks, in respect to recording instruments, are prescribed by the Political Code.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

Section 988. By whom acknowledgments may be taken in this State.
" 989. Same.
" 990. By whom taken without the State.
" 991. By whom taken without the United States.
" 992. Deputy can take acknowledgment.
" 993. Requisites for acknowledgments.

Section 994. Acknowledgment by married women.
" *995. Same.*
" *996. Officer must indorse certificate.*
" *997. General form of certificate.*
" *998. Form of acknowledgment by corporation.*
" *999. Form of certificate of acknowledgment by married women.*
" *1000. Form of certificate of acknowledgment by attorney in fact.*
" *1001. Officers must affix their signatures.*
" *1002. Certificate of authority of justices in certain cases.*
" *1003. Proof of execution, how made.*
" *1004. Witness must be personally known to officer.*
" *1005. Witness must prove, what.*
" *1006. Handwriting may be proved, when.*
" *1007. Evidence must prove, what.*
" *1008. Certificate of proof.*
" *1009. Officers authorized to do certain things.*
" *1010. When instrument is improperly certified, party may have action to correct error.*
" *1011. In certain cases parties interested may obtain judgment of proof of an instrument.*
" *1012. Effect of judgment in such action.*
" *1013. Conveyances heretofore made to be governed by then existing laws.*
" *1014. Recording, and as evidence, to be governed by then existing laws.*
" *1015. Certified copies as evidence. Records, what notice deemed from.*

Sec. 988. The proof of acknowledgment of an instrument may be made at any place within this State before a justice or clerk of the Supreme Court or a judge of the District Court.

Sec. 989. The proof or acknowledgment of an instrument may be made in this State within the city, county or district for which the officer was elected or appointed, before either:

1. A clerk of a court of record; or,
2. A county clerk; or,
3. A notary public; or,
4. A justice of the peace.

Sec. 990. The proof of acknowledgment of an instrument may be made without this State, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge, or clerk of any court of record of the United States; or,
2. A justice, judge, or clerk of any court of record of any State or Territory; or,
3. A commissioner appointed by the Governor of this State for that purpose; or,
4. A notary public; or,

5. Any other officer of the State or Territory where the acknowledgment made is authorized by its laws to take such proof or acknowledgment.

Sec. 991. The proof or acknowledgment of an instrument may be made without the United States, before either;

1. A minister, commissioner, or charge'd'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

2. A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,

3. A judge of a court of record of the country where the proof or acknowledgment is made: or,

4. Commissioners appointed for such purposes by the Governor of the State, pursuant to special statutes; or,

5. A notary public.

Sec. 992. When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

Sec. 993. The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in, and who executed the instrument: or if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

Sec. 994. The acknowledgment of a married woman to an instrument purporting to be executed by her, must be taken the same as that of any other person.

Sec. 995. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner.

Sec. 996. An officer taking the acknowledgment of an ininstrument must indorse thereon, or attach thereto, a certificate substantially in the forms hereinafter prescribed.

Sec. 997. The certificate of acknowledgment, unless it is otherwise in this Article provided, must be substantially in the following form:

State of——, } ss.
County of——, }

On this——day of——, in the year——, before me (here insert the name and quality of the officer), personally appeared ——, known to me (or proved to me on the oath of——), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

Sec. 998. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of———, } ss.
County of———, }

On this——day of——, in the year——, before me (here insert the name and quality of the officer), personally appeared ——, known to me (or proved to me on the oath of——) to be the president (or secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

Sec. 999. The certificate of acknowledgment by a married woman must be substantially in the form prescribed in Section 997.

Sec. 1000. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

State of———, } ss.
County of——. }

On this———day of———, in the year——— before me, (here insert name and quality of the officer,) personally appeared———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument as the attorney in fact of———, and acknowledged to me that he subscribed the name of——— thereto as principal, and his own name as attorney in fact.

Sec. 1001. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the State or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Sec. 1002. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of making such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

Sec. 1003. Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them; or,
2. By a subscribing witness, or,
3. By other witnesses, in cases mentioned in Section 1006.

Sec. 1004. If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

Sec. 1005. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party, is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

Sec. 1006. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,

2. When the parties and all the subscribing witnesses are non-residents of the State; or,

3. When the place of their residence is unknown to the party desiring the proof, and can not be ascertained by the exercise of due diligence; or,

4. When the subscribing witness conceals himself or can not be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or,

5. In case of the continued failure or refusal of the witness to testify for the space of one hour, after his appearance.

Sec. 1007. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with his signature, and that it is genuine: and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness.

Sec. 1008. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done, or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their place of residence, respectively, and the substance of their testimony.

Sec. 1009. Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations, as prescribed in the Code of Civil Procedure.

2. To employ and swear interpreters.

3. To issue subpoenas, as prescribed in the Code of Civil Procedure.

4. To punish for contempt, as prescribed in the Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in the Code of Civil Procedure.

Sec. 1010. When the acknowledgement or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the District Court to obtain a judgment correcting the certificate.

Sec. 1011. Any person interested under an instrument entitled to be proved for record may institute an action in the District Court against the proper parties to obtain a judgment proving such instrument.

Sec. 1012. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with the like effect as if acknowledged.

Sec. 1013. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this Code goes into effect, executed, acknowledged, proved, or recorded, is not affected by anything contained in this Chapter, but depends for its validity and legality upon the laws in force when the act was performed.

Sec. 1014. All conveyances of real property made before this Code goes into effect and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded, in the same manner and with the like effect, as conveyances executed and acknowledged in pursuance of this Chapter.

Sec. 1015. Any instrument affecting real property, which was, previous to the date this Code takes effect, copied into the proper book, kept in the office of the county clerk, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or incumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded, provided it be first shown that the original instrument was genuine.

ARTICLE IV.

EFFECT OF RECORDING, OR THE WANT THEREOF.

Section 1020. Record, where and to whom notice.
" *1021. Conveyances to be recorded, or are void, etc.*
" *1022. Conveyances defined.*
" *1023. Powers of attorney, how revoked.*
" *1024. Unrecorded instruments valid between the parties.*

Sec. 1020. Every conveyance of real property, acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

Sec. 1021. Every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Sec. 1022. The term "conveyance," as used in Sections 1020 and 1021, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to real property may be affected, except wills.

Sec. 1023. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

Sec. 1024. An unrecorded instrument is valid as between the parties and those who have notice thereof.

CHAPTER V.

UNLAWFUL TRANSFERS.

Section 1026. Certain instruments void against purchasers, etc.
" *1027. Not void against purchaser having notice, unless fraud is mutual.*
" *1028. Power to revoke, when deemed executed.*
" *1029. Same.*
" *1030. Purchaser in good faith not affected.*
" *1031. Other provisions.*

Sec. 1026. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

Sec. 1027. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made was a privy to the fraud intended.

Sec. 1028. Where a power to revoke or modify an instrument affecting the title to, or enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

Sec. 1029. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

Sec. 1030. The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this Chapter.

Sec. 1031. Other provisions concerning unlawful transfers are contained in Part II., Division Fourth, of this Code, concerning the Special Relations of Debtor and Creditor.

TITLE V.

HOMESTEADS.

Chapter I. General provisions.
“ *II. Homestead of the head of a family.*

CHAPTER I.

GENERAL PROVISIONS.

Section 1036. Homestead, of what it consists.
“ *1037. From what it may be carved.*
“ *1038. From what not.*
“ *1039. Exempt from forced sale.*
“ *1040. Subject to, when.*
“ *1041. How conveyed or incumbered.*
“ *1042. How abandoned.*
“ *1043. Same.*
“ *1044. Proceedings on execution against homestead.*
“ *1045. Same.*
“ *1046. Same.*
“ *1047. Same.*
“ *1048. Same.*
“ *1049. Same.*
“ *1050. Same.*
“ *1051. Same.*
“ *1052. Same.*
“ *1053. Same.*
“ *1054. Same.*
“ *1055. Same.*
“ *1056. After sale, money equal to homestead exemption protected.*
“ *1057. Compensation of appraisers.*
“ *1058. Costs.*
“ *1059. Who may select homestead, value of.*
“ *1060. Head of family defined.*

Sec. 1036. The homestead consists of the dwelling house in which the claimant resides, and the land on which the same is situated, selected as in this Title provided.

Sec. 1037. If the claimant be married, the homestead may be selected from the property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of Section 1060, the homestead may be selected from any of his or her property.

Sec. 1038. The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, or joining in making, the declaration of homestead.

Sec. 1039. The homestead is exempt from execution or forced sale, except as in this Title provided.

Sec. 1040. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; but no judgments obtained before this Code takes effect shall constitute such liens.

2. On debts secured by mechanics', laborers', or vendors' leins upon the premises.

3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife, or by an unmarried claimant.

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

Sec. 1041. The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

Sec. 1042. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married.

2. By the claimant if unmarried.

Sec. 1043. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

Sec. 1044. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in Section 1040, is levied upon the homestead, the judgment creditor may apply to the District Court of the county in which the homestead is situated, or a judge thereof, for the appointment of persons to appraise the value thereof.

Sec. 1045. The application must be made upon a verified petition, showing:

1. The fact that an execution has been levied upon the homestead.

2. The name of the claimant.

3. That the value of the homestead exceeds the amount of the homestead exemption.

Sec. 1046. The petition must be filed with the clerk of the District Court.

Sec. 1047. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, at least two days before the hearing.

Sec. 1048. At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents and freeholders of the county to appraise the value of the homestead.

Sec. 1049. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

Sec. 1050. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption they must determine whether the land claimed can be divided without material injury.

Sec. 1051. Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

Sec. 1052. If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

Sec. 1053. If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under execution.

Sec. 1054. At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

Sec. 1055. If the sale is made the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution.

Sec. 1056. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

Sec. 1057. The court must fix the compensation of the appraisers, not to exceed three dollars per day each for the time actually engaged.

Sec. 1058. The execution creditor must pay the costs of these proceedings in the first instance, but in the cases provided for in Sections 1052 and 1053 the amount so paid must be added as costs on execution, and collected accordingly.

Sec. 1059. Homesteads may be selected and claimed:

1. Consisting of any quantity of land not exceeding one hundred and sixty acres used for agricultural purposes, and the dwelling house thereon and its appurtenances, and not included in any town plot, city, or village; or,

2. A quantity of land not exceeding in amount one-fourth of an acre, being within a town plot, city, or village, and the dwelling house thereon and its appurtenances. Such homestead, in either case, shall not exceed in value the sum of two thousand, five hundred dollars.

Sec. 1060. The phrase "head of a family," as used in this Title, includes within its meaning:

1. The husband, when the claimant is a married person.

2. Every person who has residing on the premises with him or her or under his or her care and maintenance, either:

First—His or her minor child, or the minor child of his or her deceased wife or husband.

Second—A minor brother or sister, or the minor child of a deceased brother or sister.

Third—A father, mother, grandfather, or grandmother.

Fourth—The father, mother, grandfather, or grandmother, of a deceased husband or wife.

Fifth—An unmarried sister or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

Section 1062. Mode of selection.
" *1063. Declaration of homestead.*
" *1064. Declaration must be recorded.*
" *1065. Tenure by which homestead is held.*

Sec. 1062. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

Sec. 1063. The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family; or when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit.

2. A statement that the person making it is residing on the premises and claims them as a homestead.

3. A description of the premises.

4. An estimate of their actual cash value.

Sec. 1064. The declaration must be recorded in the office of the clerk of the county in which the land is situated.

Sec. 1065. From and after the time the declaration is filed for record, the premises therein described constitute a homestead.

Upon the death of the person whose property was selected as a homestead, it shall go to his or her heirs or devisees, subject to the use of the widow during her life, if the property selected as a homestead, before selection, belonged to the husband; and subject to the use of the husband during his life, if the property selected as a homestead before selection belonged to the wife.

And in no case shall the homestead be held liable for the debts of the owner, except as provided in this Title.

TITLE VI.

WILLS.

Chapter I. Execution and revocation of wills.
" II. Interpretation of wills.
" III. General provisions relating to wills.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

Section 1070. Who may make a will.
" 1071. Will, or part thereof, procured by fraud.
" 1072. Who may take by will.
" 1073. Written will, how to be executed.
" 1074. Definition of an olographic will.
" 1075. Witness to add residence.
" 1076. Mutual will.
" 1077. Competency of subscribing witness.
" 1078. Conditional will.
" 1079. Gifts to subscribing witnesses void. Creditors competent witnesses.
" 1080. Witness who is a devisee, and who would be entitled to share of testator's estate if no will, entitled to share to amount of devise.
" 1081. Will made out of State.
" 1082. Subsequent change of domicile.
" 1083. Republication by codicil.
" 1084. Nuncupative will, how to be executed.
" 1085. Requisites of a valid nuncupative will.
" 1086. Proof of nuncupative wills.
" 1087. Probate of nuncupative wills.
" 1088. Written will, how revoked.
" 1089. Evidence of revocation.
" 1090. Revocation of duplicate.
" 1091. Revocation by subsequent will.

Section 1092. Antecedent not revived by revocation of subsequent will.
" *1093. Revocation by marriage and birth of issue.*
" *1094. Effect of marriage of a man on his will.*
" *1095. Effect of marriage of a woman on her will.*
" *1096. Contract of sale not a revocation.*
" *1097. Mortgage not a revocation of will.*
" *1098. Conveyance, when not a revocation.*
" *1099. When it is a revocation.*
" *1100. Revocation of codicils.*
" *1101. After-born child, unprovided for, to succeed.*
" *1102. Children or issue of children of testator unprovided for by his will.*
" *1103. Share of after-born child, out of what part of estate to be paid.*
" *1104. Advancement during lifetime of testator.*
" *1105. Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants.*
" *1106. Devises of land, how construed.*
" *1107. Will to pass rights acquired after the making thereof.*
" *1108. Restriction to devise for charitable uses.*

Sec. 1070. Every person over the age of eighteen years of sound mind, may, by last will, dispose of all of his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in Title VII., of this Part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

Sec. 1071. A will, or a part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

Sec. 1072. A testamentary disposition may be made to any person capable of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.

Sec. 1073. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowl-

edging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

Sec. 1074. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed.

Sec. 1075. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Sec. 1076. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

Sec. 1077. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

Sec. 1078. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

Sec. 1079. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

Sec. 1080. If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Sec. 1081. A will of real or personal property, or both, or a revocation thereof made out of this State by a person not having his domicile in this State, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this State, and according to the provisions of this Chapter.

Sec. 1082. Whenever a will or revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding the testator subsequently changed his domicile to a place by the law of which such will would be void.

Sec. 1083. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

Sec. 1084. A nuncupative will is not required to be written, nor to be declared or attested with any formalities.

Sec. 1085. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time to bear witness that such was his will, or to that effect.

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been, at the time, in expectation of immediate death from injury received the same day.

Sec. 1086. No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Sec. 1087. No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.

Sec. 1088. Except in the cases in this Chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of a testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Sec. 1089. When a will is canceled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction, must be proved by two witnesses.

Sec. 1090. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

Sec. 1091. A prior will is not revoked by a subsequent will, unless the later contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Sec. 1092. If after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will was duly republished.

Sec. 1093. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Sec. 1094. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Sec. 1095. A will, executed by an unmarried woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

Sec. 1096. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Sec. 1097. A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devises and legacies therein contained must pass, subject to such charge or incumbrance.

Sec. 1098. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation, but the will passes the property which would otherwise devolve by succession.

Sec. 1099. If the instrument by which an alteration is made of the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

Sec. 1100. The revocation of a will revokes all its codicils.

Sec. 1101. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

Sec. 1102. When any testator omits to provide in his will for any of his children or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

Sec. 1103. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from the devisees or legatees in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or, other provision in the will, would thereby be defeated: in such case, such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Sec. 1104. If such children, or their descendents, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Sec. 1105. When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

Sec. 1106. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Sec. 1107. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

Sec. 1108. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society, or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid; *Provided*, That no such devises or bequests shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a *pro rata* deduction from such devises or bequests shall be made, so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

Section 1115. Testator's intention to be carried out.
" 1116. Intention to be ascertained from will.
" 1117. Rules of interpretation.
" 1118. Several instruments are to be taken together.
" 1119. Harmonizing various parts.
" 1120. In what case devise not affected.
" 1121. When ambiguous or doubtful.
" 1122. Words taken in ordinary sense.
" 1123. Words to receive an operative construction.
" 1124. Intestacy to be avoided.
" 1125. Effect of technical words.
" 1126. Technical words not necessary.
" 1127. Certain words not necessary to pass a fee.
" 1128. Power to devise, how executed by terms of will.
" 1129. Devise or bequest of all real or personal property, or both.
" 1130. Residuary clause.
" 1131. Same.
" 1132. "Heirs," "relatives," "issue," "descendants," etc.

Section 1133. Words of donation and limitation.
" *1134. To what time words refer.*
" *1135. Devise or bequest to a class.*
" *1136. When conversion takes effect.*
" *1137. When child born after testator's death takes under will.*
" *1138. Mistakes and omissions.*
" *1139. When devises and bequests vest.*
" *1140. When cannot be divested.*
" *1141. Death of devisee or legatee.*
" *1142. Interests in remainder are not affected.*
" *1143. Conditional devises and bequests.*
" *1144. Condition precedent, what.*
" *1145. Effect of condition precedent.*
" *1146. Conditions precedent, when deemed performed.*
" *1147. Condition subsequent, what.*
" *1148. Devisees, etc., take as tenants in common.*
" *1149. Advancements, when ademptions.*

Sec. 1115. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

Sec. 1116. In cases of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

Sec. 1117. In interpreting a will, subject to the law of this State, the rules prescribed by the following sections of this Chapter are to be observed, unless an intention to the contrary clearly appears.

Sec. 1118. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Sec. 1119. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the later must prevail.

Sec. 1120. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

Sec. 1121. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

Sec. 1122. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Sec. 1123. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

Sec. 1124. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Sec. 1125. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Sec. 1126. Technical words are not necessary to give effect to any species of disposition by a will.

Sec. 1127. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

Sec. 1128. Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator.

Sec. 1129. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms, denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Sec. 1130. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

Sec. 1131. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

Sec. 1132. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin" of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the Title on Succession in this Code.

Sec. 1133. The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person.

Sec. 1134. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Sec. 1135. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

Sec. 1136. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

Sec. 1137. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

Sec. 1138. When applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

Sec. 1139. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

Sec. 1140. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

Sec. 1141. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in Section 1105.

Sec. 1142. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

Sec. 1143. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

Sec. 1144. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Sec. 1145. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Sec. 1146. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

Sec. 1147. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Sec. 1148. A devise or legacy given to more than one person vests in them as owners in common.

Sec. 1149. Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

Section 1155. Nature and designation of legacies.
  1. Specific.
  2. Demonstrative.
  3. Annuities.
  4. Residuary.
  5. General.
" *1156. Order of sale in case of an intestate.*
" *1157. Order of sale in case of testator.*
" *1158. Legacies, how charged with debts.*
" *1159. Same.*
" *1160. Abatement.*
" *1161. Specific devises and legacies.*
" *1162. Heirs' conveyance good, unless will is proved within four years.*
" *1163. Possession of legatees.*
" *1164. Bequest of interest.*
" *1165. Satisfaction.*
" *1166. Legacies, when due.*
" *1167. Interest.*
" *1168. Construction of these rules.*
" *1169. Executor according to the tenor.*
" *1170. Power to appoint is invalid.*
" *1171. Executor not to act till qualified.*
" *1172. Execution and construction of prior wills not affected.*
" *1173. The law of what place applies.*
" *1174. Liability of beneficiaries for testator's obligations.*

Sec. 1155. Legacies are distinguished and designated, according to their nature, as follows:

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

5. All other legacies are general legacies.

Sec. 1156. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this Code and the Code of Civil Procedure.

Sec. 1157. The property of a testator, except as otherwise specially provided for in this Code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts.

2. Property not disposed of by will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed; and,

5. All other property ratably. Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for.

Sec. 1158. The property of a testator, except as otherwise specially provided in this Code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed.

Sec. 1159. Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator.

Sec. 1160. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Sec. 1161. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the District Court to sell the property devised and bequeathed, in the cases herein provided.

Sec. 1162. The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the District Court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the devisor's death.

Sec. 1163. When specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

Sec. 1164. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Sec. 1165. A legacy, or a gift in contemplation, fear or peril of death, may be satisfied before death.

Sec. 1166. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

Sec. 1167. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Sec. 1168. The four preceding sections are in all cases to be controlled by a testator's express intention.

Sec. 1169. Where it appears, by the term of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been made executor.

Sec. 1170. An authority to an executor to appoint an executor is void.

Sec. 1171. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

Sec. 1172. The provisions of this Title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will.

Sec. 1173. Except as otherwise provided, the validity and interpretation of wills are governed, when relating to real property within this State, by the law of this State; when relating to personal property, by the law of the testator's domicile.

Sec. 1174. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

TITLE VII.

SUCCESSION.

Section 1180. Succession defined.
" *1181. Who first succeeds to possession of estates not devised.*
" *1182. Succession to and distribution of property.*
" *1183. Illegitimate children to inherit in certain events.*
" *1184. The mother is a successor to illegitimate child.*
" *1185–1189. Degrees of kindred, how computed.*
" *1190. Relatives of half blood.*
" *1191. Advancements constitute part of distributive share.*
" *1192. Advancements, when too much, or not enough.*
" *1193. What are advancements.*
" *1194. Value of advancements, how determined.*
" *1195. When heir, advanced to, dies before decedent.*
" *1196. Inheritance by representation.*
" *1197. Aliens may inherit, when, and how.*
" *1198. Succession not claimed, Attorney General to cause to be sold, and proceeds deposited.*
" *1199. When the property and estate escheat to the State.*
" *1200. Property escheated subject to charges as other property.*
" *1201. Successor liable for decedent's obligations.*

Sec. 1180. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Sec. 1181. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the District Court, and to the possession of any administrator appointed by that court for the purposes of administration.

Sec. 1182. When any person having title to any estate not limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this Code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the dece-

dent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

2. If the decedent leave no issue, the estate goes one-half to the surviving husband or wife, and the other to the decedent's father and mother in equal shares, and if either be dead the whole of said half goes to the other. If there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If the decedent leave no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either be dead then to the other.

3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.

4. If the decedent leave a surviving husband or wife, and neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife.

5. If the decedent leave neither issue, husband, wife, father, mother, brother, nor sister, the estate goes to the next of kin, in equal degree, excepting that where there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

6. If the decedent leave several children, or one child, and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

8. If the decedent leave no husband, wife, or kindred, the estate escheats to the State.

Sec. 1183. Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless before his death, his parents shall have inter-married, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

Sec. 1184. If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

Sec. 1185. The degree of kindred is established by the number of generations, and each generation is called a degree.

Sec. 1186. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

Sec. 1187. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

Sec. 1188. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and *vice versa* with regard to the father and grandfather toward the sons and grandsons.

Sec. 1189. In the collateral line, the degrees are counted by generations from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

Sec. 1190. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise, or gift of some one of his ancestor, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

Sec. 1191. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

Sec. 1192. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

Sec. 1193. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

Sec. 1194. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

Sec. 1195. If any child, or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in the like manner as if the advancement had been made directly to them.

Sec. 1196. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Sec. 1197. Resident aliens may take in all cases by succession as citizens: and no person capable of succeeding under the provisions of this Title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession, unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

Sec. 1198. When succession is not claimed as provided in the preceding section, the District Court, on information, must direct the Attorney General to reduce the property to his or the possession of the State, or to cause the same to be sold, and the same or the proceeds thereof to be deposited in the State treasury for the benefit of such non-resident alien, or his legal representative, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the State Auditor and Treasurer is produced that he is entitled to succeed thereto.

Sec. 1199. When so claimed, the evidence and the joint order of the Auditor and Treasurer must be filed by the Treasurer as his voucher, and the property delivered or the proceeds paid to the claimant on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the State, and is placed by the State Treasurer to the credit of the general fund.

Sec. 1200. Real property passing to the State under the last section, whether held by the State or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of the Code of Civil Procedure, in relation to escheated estates.

Sec. 1201. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Cviil Procedure.

TITLE VIII.

WATER RIGHTS.

Section 1210. Rights to water may be acquired by appropriation.
“ *1211. Appropriation must be for a useful purpose.*
“ *1212. Point of diversion may be changed.*
“ *1213. Water may be turned into natural channels.*
“ *1214. Surplus water.*
“ *1215. First in time, first in right.*
“ *1216. Notice of appropriation.*
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“ *1223. Measurement of water.*
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“ *1227. Owners of water to sell surplus.*
“ *1228. Duty of purchaser to dig ditches.*

Section 1229. Enforcement of right to surplus.
" *1230. Purchaser cannot sell.*
" *1231. Dam or reservoir to be securely constructed.*
" *1232. No person to use insecure reservoir.*

Sec. 1210. The right to the use of running water flowing in the rivers, streams, canyons, and ravines of this State, may be acquired by appropriation.

Sec. 1211. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest abandons and ceases to use the water for such purpose the right ceases; but questions of abandonment shall be questions of fact, and shall be determined as other questions of fact.

Sec. 1212. The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

Sec. 1213. The water appropriated may be turned into the channel of another stream and mingled with its waters, and then be reclaimed; but, in reclaiming it, water already appropriated by another must not be diminished in quantity, or deteriorated in quality.

Sec. 1214. In all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream, and there shall at any time be a surplus of water so diverted, over and above what is actually used by the prior appropriator, such person shall be required to turn and to cause to flow back into the stream, such surplus water, and upon failure so to do, within five days after demand being made upon him in writing by any person having a right to the use of such surplus water, the person so diverting the same, shall be liable to the person aggrieved thereby in the sum of twenty-five dollars for each and every day such water shall be withheld after such notice; to be recovered by civil action by any person having a right to the use of such surplus water.

Sec. 1215. As between appropriators the one first in time is first in right.

Sec. 1216. Any person hereafter desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

1. The number of inches claimed, measured as hereinafter provided.

2. The purpose for which it is claimed and place of intended use.

3. The means of diversion, with size of flume, ditch, pipe, or aqueduct, by which he intends to divert it.

4. The date of appropriation.
5. The name of the appropriator.

Within twenty days after the date of appropriation the appropriator shall file with the county clerk of the county in which such appropriation is made a notice of appropriation, which, in addition to the facts required to be stated in the posted notice, as hereinbefore prescribed, shall contain the name of the stream from which the diversion is made, if such stream have a name, and if it have not, such a description of the stream as will identify it, and an accurate description of the point of diversion on such stream, with reference to some natural object or permanent monument. The notice shall be verified by the affidavit of the appropriator, or some one in his behalf, which affidavit must state that the matters and facts contained in the notice are true.

Sec. 1217. Within forty days after posting such notice the appropriator must proceed to prosecute the excavation or construction of the work by which the water appropriated is to be diverted, and must prosecute the same with reasonable diligence to completion. If the ditch or flume, when constructed, is inadequate to convey the amount of water claimed in the notice aforesaid, the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person, in accordance with the provisions of this title.

Sec. 1218. A failure to comply with the provisions of this Title deprives the appropriator of the right to the use of water as against a subsequent claimant who complies therewith, but by complying with the provisions of this Title, the right to the use of the water shall relate back to the date of posting the notice.

Sec. 1219. Persons who have heretofore acquired rights to the use of water shall, within six months after the publication of this Title, file in the office of the county clerk of the county in which the water right is situated, a declaration in writing, except notice be already given of record as required by this Title, or a declaration in writing be already filed as required by this section, containing the same facts as required in the notice provided for record in Section 1216, of this Title, and verified as required in said last mentioned section, in cases of notice of appropriation of water; *Provided*, That a failure to comply with the requirements of this section shall in no wise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts.

Sec. 1220. The record provided for in Sections 1216 and 1219, of this Title, when duly made, shall be taken and recorded in all courts of this State as *prima facie* evidence of the statements therein contained.

Sec. 1221. In any action hereafter commenced for the protection of rights acquired to water under the laws of this

State, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to such action, and the court may in one judgment settle the relative priorities and rights of all the parties to such action. When damages are claimed for the wrongful diversion of water in any such action, the same may be assessed and apportioned by the jury in their verdicts, and judgment thereon may be entered for or against one or more of several plaintiffs, or for or against one or more of several defendants, and may determine the ultimate rights of the parties between themselves.

In any action concerning joint water rights, or joint rights in water ditches, unless partition of the same is asked by parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint.

Sec. 1222. The county clerk must keep a well bound book, in which he must record the notices and declarations provided for in this Title, and he shall be entitled to have and receive the same fees as are now or hereafter may be allowed by law for recording instruments entitled to be recorded.

Sec. 1223. The measurement of water appropriated under this Title shall be conducted in the following manner: A box or flume shall be constructed with a head gate placed so as to leave an opening of six inches between the bottom of the box or flume and lower edge of the head gate, with a slide to enter at one side of, and of sufficient width to close the opening left by the head gate, by means of which the dimensions of the opening are to be adjusted. The box or flume shall be placed level, and so arranged that the stream in passing through the aperture is not obstructed by backwater, or an eddy, below the gate; but before entering the opening to be measured the stream shall be brought to an eddy, and shall stand three inches on the head gate and above the top of the opening. The number of square inches contained in the opening shall be the measure of inches of water.

Sec. 1224. The right to conduct water from or over the land of another for any beneficial use, includes the right to raise any water by means of dams, reservoirs, or embankments to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor may be acquired upon payment of just compensation, in the manner provided by law for the taking of private property for public use.

Sec. 1225. Any person or persons, corporation or company, who may dig and construct ditches, dykes. flumes or canals, over or across any public roads or highways, or who use the waters of such ditches, dykes, flumes, or canals, shall be required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes, or canals, may flow over, or in anywise injure any roads or highways, either by bridging or otherwise.

Sec. 1226. Any person or persons offending against the preceding section, on conviction thereof, shall pay for every offence a fine of not less than twenty-five dollars, nor more than one hundred dollars, with costs of prosecution. One-half of the fine shall be paid into the county treasury for the benefit of the common schools of the county in which the offence was committed, and the other half shall be paid to the person or persons informing the nearest magistrate that such offence has been committed, who shall issue a warrant upon proper complaint being made.

Sec. 1227. Any person or persons, corporation or company, having the right to use, sell or dispose of water, and engage in using, selling or disposing of the same, who shall have a surplus of water not used, or sold, or any person or persons, corporation or company, having a surplus of water, and the right to sell and dispose of the same, shall, and they or it are hereby required, upon the payment or tender to the person or persons entitled thereto an amonnt equal to the usual and customary rates per inch, to convey and deliver to the person or persons, corporation or company, such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water shall exist and said payment or tender be made as aforesaid.

Sec. 1228. Any person or persons, corporation or company, desiring to avail themselves of the provisions of the preceding section, shall, at their own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by it or them, and shall pay or tender to the person or persons, corporation or company having the right to the use, sale or disposal thereof, an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume or aqueduct, and putting in gates, gauges or other proper and necessary appliances usual and customary in such cases, and until the same shall be so done, the delivery of the said surplus water shall not be required as provided in the preceding section.

Sec. 1229. Any person or persons, corporation or company, constructing the necessary ditches, aqueducts or flumes, and making the payments or tenders hereinbefore provided, shall be entitled to the use of so much of the said surplus water as said ditches, flumes or aqueducts shall have the capacity to carry, and for which payment or tender shall have been made as aforesaid, with all the rights and privileges incidental thereto, so long as said unsold or surplus water exists and said payment or tender shall be or have been made, and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

Sec. 1230. Nothing in the three preceding sections shall be so construed as to give the person or persons, corporation or company, acquiring the right to the use of water as therein provided, the right to sell or dispose of the same after being so used by it for them, or prevent the original owner or proprietor from retaking, selling and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

Sec. 1231. No person shall hereafter fill, or procure to be filled, with water any dam or reservoir which is not so thoroughly and substantially constructed as that it will safely and securely hold the water to be turned therein.

Sec. 1232. No person shall hereafter construct or cause to be constructed on a stream any dam or reservoir to accumulate the waters thereof, except in a thorough, secure and substantial manner.

DIVISION THIRD.

Part I. Obligations in general.
" II. Contracts.
" III. Obligations imposed by law.
" IV. Obligations arising from particular transactions.

PART I.

OBLIGATIONS IN GENERAL.

Title I. Definition of obligations.
" II. Interpretation of obligations.
" III. Transfer of obligations.
" IV. Extinction of obligations.

TITLE I.

DEFINITION OF OBLIGATIONS.

Section 1240. Obligation, what.
" 1241. How created and enforced.

Sec. 1240. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

Sec. 1241. An obligation arises either from:

1. The contract of the parties; or,
2. The operation of law.

An obligation arising from operation of law may be enforced by civil action or proceeding, or in the manner provided by law.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

Chapter I. General rules of interpretation.
" II. Joint or several obligations.
" III. Conditional obligations.
" IV. Alternative obligations.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

Section 1243. General rules.

Sec. 1243. The rules which govern the interpretation of contracts are prescribed by Part II., of this Division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

Section 1245. Obligations, joint or several, etc.
" 1246. When joint and several.
" 1247. Contribution between joint parties.

Sec. 1245. An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint.
2. Several; or,
3. Joint and several.

Sec. 1246. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

Sec. 1247. A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

Section 1250. Obligation, when conditional.
" 1251. Conditions, kinds of.
" 1252. Conditions precedent.
" 1253. Conditions concurrent.
" 1254. Condition subsequent.
" 1255. Performance, etc., of conditions, when essential.
" 1256. When performance, etc., excused.
" 1257. Impossible or unlawful conditions void.
" 1258. Conditions involving forfeiture, how construed.

Sec. 1250. An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

Sec. 1251. Conditions may be precedent, concurrent, or subsequent.

Sec. 1252. A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

Sec. 1253. Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

Sec. 1254. A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

Sec. 1255. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section.

Sec. 1256. If a party to an obligation gives notice to another before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former.

Sec. 1257. A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the Article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.

Sec. 1258. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

Section 1260. Who has the right of selection.
" 1261. Right of selection, how lost.
" 1262. Alternatives indivisible.
" 1263. Nullity of one or more of alternative obligations.

Sec. 1260. If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

Sec. 1261. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is to be fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

Sec. 1262. The party having the right of selection between alternative acts, must select one of them in its entirety, and cannot select part of one and part of another without the consent of the other party.

Sec. 1263. If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other stood alone.

TITLE III.

TRANSFER OF OBLIGATIONS.

Section 1265. Burden of obligation not transferable.
" *1266. Rights arising out of obligation transferable.*
" *1267. Non-negotiable instruments may be transferred.*
" *1268. Covenants running with land, what.*
" *1269. What covenants run with land.*
" *1270. Same.*
" *1271. Same.*
" *1272. What covenants run with land when assigns are named.*
" *1273. Who are bound by covenants.*
" *1274. Who are not.*
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Sec. 1265. The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise, except as provided by Section 1274.

Sec. 1266. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

Sec. 1267. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defences existing in favor of the maker at the time of the indorsement.

Sec. 1268. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

Sec. 1269. The only covenants which run with the land are those specified in this Title, and those which are incidental thereto.

Sec. 1270. Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.

Sec. 1271. The last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

Sec. 1272. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far as the assigns thus mentioned are concerned.

Sec. 1273. A covenant running with the land, binds those only who acquire the whole estate of the covenantor in some part of the property.

Sec. 1274. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits.

Sec. 1275. Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

Chapter I. Performance.
" *II. Offer of performance.*
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CHAPTER I.

PERFORMANCE.

Section 1280. Obligation extinguished by performance.
" *1281. Performance by one of several joint debtors.*
" *1282. Performance to one of joint creditors.*
" *1283. Effect of directions by creditors.*
" *1284. Partial performance.*
" *1285. Payment, what.*
" *1286. Application of general performance.*

Sec. 1280. Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

Sec. 1281. Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

Sec. 1282. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the Title on Deposit.

Sec. 1283. If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

Sec. 1284. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

Sec. 1285. Performance of an obligation for the delivery of money only is called payment.

Sec. 1286. Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

2. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor, at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor.

3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

First—Of interest due at the time of the performance.

Second—Of principal due at that time.

Third—Of the obligation earliest in date of maturity.

Fourth—Of an obligation not secured by a lien or collateral undertaking.

Fifth—Of an obligation secured by a lien or collateral undertaking.

CHAPTER II.

OFFER OF PERFORMANCE.

Section. 1290. Obligation extinguished by offer of performance.
" *1291. Offer of partial performance.*
" *1292. By whom to be made.*
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" *1309. Effect of offer on accessories of obligation.*
" *1310. Creditor's retention of thing which he refuses to accept.*

Sec. 1290. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

Sec. 1291. An offer of partial performance is of no effect.

Sec. 1292. An offer of performance must be made by the debtor, or by some person on his behalf, and with his assent.

Sec. 1293. An offer of performance must be made to the creditor, or to any one or two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and, if not, wherever the creditor may be found.

Sec. 1294. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,

2. Wherever the person to whom the offer ought to be made can be found; or,

3. If such person cannot, with reasonable diligence be found within the State, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can with reasonable diligence, be found within the State; or,

4. If this cannot be done, then at any place within this State.

Sec. 1295. Where an obligation fixes a time for its performance, an offer of performance must be made at that time within reasonable hours, and not before nor afterwards.

Sec. 1296. Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

Sec. 1297. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the meantime.

Sec. 1298. An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

Sec. 1299. An offer of performance must be free from any conditions which the creditor is not bound on his part to perform.

Sec. 1300. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

Section 1301. The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance unless the offer is accepted.

Sec. 1302. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

Sec. 1303. When a debtor is entitled to the performance of a condition to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

Sec. 1304. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

Sec. 1305. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this State, of good repute, and notice thereof is given to the creditor.

Sec. 1306. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

Sec. 1307. The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

Sec. 1308. The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

Sec. 1309. An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation and has the same effect upon all its incidents as a performance thereof.

Sec. 1310. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

Section 1315. What excuses performance, etc.
" *1316. Effect of prevention of performance.*
" *1317. Same.*
" *1318. Effect of refusal to accept performance before offer.*

Sec. 1315. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse.

2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this State or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended, or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

Sec. 1316. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

Sec. 1317. If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

Sec. 1318. A refusal by a creditor to accept performance made before an offer thereof, is equivalent to an offer and refusal, unless before performance is actually due, he gives notice to the debtor of his willingness to accept it.

CHAPTER IV.

ACCORD AND SATISFACTION.

Section 1321. Accord, what.
" *1322. Effect of accord.*
" *1323. Satisfaction, what.*
" *1324. Accord of liquidated debt.*

Sec. 1321. An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

Sec. 1322. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

Sec. 1323. Acceptance by the creditor, of the consideration of an accord, extinguishes the obligation, and is called satisfaction.

Sec. 1324. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing, for that purpose, though without any new consideration, extinguishes the obligation.

CHAPTER V.

NOVATION.

Section 1328. Novation, what.
" *1329. Modes of novation.*
" *1330. Novation a contract.*
" *1331. Rescission of novation.*

Sec. 1328. Novation is the substitution of a new obligation for an existing one.

Sec. 1329. Novation is made:

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation.

2. By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one with intent to transfer the rights of the latter to the former.

Sec. 1330. Novation is made by contract, and is subject to all the rules concerning contracts in general.

Sec. 1331. When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and the fact is unknown to the creditor; or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

CHAPTER VI.

RELEASE.

Section 1335. Obligation extinguished by release.
" *1336. Certain claims not affected by general release.*
" *1337. Release of several joint debtors.*

Sec. 1335. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

Sec. 1336. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Sec. 1337. A release of one of two or more joint debtors does not extinguish the obligation of any of the others unless they are mere guarantors; nor does it affect their rights to contribution from him.

PART II.

CONTRACTS.

Title I. Nature of a contract.
" *II. Manner of creating contracts.*
" *III. Interpretation of contracts.*
" *IV. Unlawful contracts.*
" *V. Extinction of contracts.*

TITLE I.

NATURE OF A CONTRACT.

Chapter I. Definition.
" *II. Parties.*
" *III. Consent.*
" *IV. Object.*
" *V. Consideration.*

CHAPTER I.

DEFINITION.

Section 1340. Contract, what.
" *1341. Essential elements of contract.*

Sec. 1340. A contract is an agreement to do or not to do a certain thing.

Sec. 1341. It is essential to the existence of a contract that there should be:

1. Parties capable of contracting.
2. Their consent.
3. A lawful object; and,
4. A sufficient cause or consideration.

CHAPTER II.

PARTIES.

Section 1345. Who may contract.
" *1346. Minors, etc.*
" *1347. Identification of parties necessary.*
" *1348. When contract for benefit of third person may be enforced.*

Sec. 1345. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

Sec. 1346. Minors and persons of unsound mind have only such capacity as is defined by Part I., of Division One of this Code.

Sec. 1347. It is essential to the validity of a contract, not only that the parties should not exist, but that it should be possible to identify them.

Sec. 1348. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

CHAPTER III.

CONSENT.

Section 1354. Essentials of consent
" *1355. Consent, when voidable.*

Section 1356. Apparent consent when not free.
" *1357. When deemed to have been obtained by fraud, etc.*
" *1358. Duress, what.*
" *1359. Menace, what.*
" *1360. Fraud, actual or constructive.*
" *1361. Actual fraud, what.*
" *1362. Constructive fraud, what.*
" *1363. Actual fraud a question of fact.*
" *1364. Undue influence, what.*
" *1365. Mistake, what.*
" *1366. Mistake of fact.*
" *1367. Mistake of law.*
" *1368. Mistake of foreign laws.*
" *1369. Mutuality of consent.*
" *1370. Communication of consent.*
" *1371. Mode of communicating acceptance of proposal.*
" *1372. When communication deemed complete.*
" *1373. Acceptance by performance of conditions.*
" *1374. Acceptance must be absolute.*
" *1375. Revocation of proposal.*
" *1376. Revocation, how made.*
" *1377. Ratification of contract void for want of consent.*
" *1378. Assumption of obligation by acceptance of benefits.*

Sec. 1354. The consent of the parties to a contract must be:
1. Free.
2. Mutual; and,
3. Communicated by each to the other.

Sec. 1355. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the Chapter on Rescission.

Sec. 1356. An apparent consent is not real or free when obtained through:
1. Duress.
2. Menace.
3. Fraud.
4. Undue influence; or,
5. Mistake.

Sec. 1357. Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

Sec. 1358. Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife.

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harrassing or oppressive.

Sec. 1359. Menace consists in a threat:

1. Of such duress as is specified in Subdivisions 1 and 3, of the last section.

2. Of unlawful and violent injury to the person or property of any such person, as is specified in the last section; or,

3. Of injury to the character of any such person.

Sec. 1360. Fraud is either actual or constructive.

Sec. 1361. Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true by one who does not believe it to be true.

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

3. The suppression of that which is true, by one having knowledge or belief of the fact.

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

Sec. 1362. Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law especially declares to be fraudulent, without respect to actual fraud.

Sec. 1363. Actual fraud is always a question of fact.

Sec. 1364. Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and an unfair advantage of another's necessities or distress.

Sec. 1365. Mistake may be either of fact or law.

Sec. 1366. Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

Sec. 1367. Mistake of law constitutes a mistake, within the meaning of this Article, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

Sec. 1368. Mistake of foreign laws is a mistake of fact.

Sec. 1369. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the Chapter on Interpretation, they are to be deemed so to agree without regard to the fact.

Sec. 1370. Consent can be communicated with effect only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

Sec. 1371. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

Sec. 1372. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

Sec. 1373. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

Sec. 1374. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

Sec. 1375. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

Sec. 1376. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by Sections 1370 and 1372, before his acceptance has been communicated to the former.

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance.

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

Sec. 1377. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

Sec. 1378. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

CHAPTER IV.

OBJECT OF A CONTRACT.

Section 1385. Object, what.
" *1386. Requisites of object.*
" *1387. Impossibility, what.*
" *1388. When contract wholly void.*
" *1389. When contract partially void.*

Sec. 1385. The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

Sec. 1386. The object of the contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

Sec. 1387. Everything is deemed possible except that which is impossible in the nature of things.

Sec. 1388. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

Sec. 1389. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

CHAPTER V.

CONSIDERATION.

Section. 1393. Good consideration, what.
" *1394. How far legal or moral obligation is a good consideration.*
" *1395. Consideration lawful.*
" *1396. Effect of illegality.*
" *1397. Consideration executed or executory.*
" *1398. Executory consideration.*
" *1399. How ascertained.*
" *1400. Effect of impossibility of ascertaining consideration.*
" *1401. Same.*
" *1402. Written instrument presumptive evidence of consideration.*
" *1403. Burden of proof to invalidate sufficient consideration.*

Sec. 1393. Any benefit conferred or agreed to be conferred upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

Sec. 1394. An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

Sec. 1395. The consideration of a contract must be lawful within the meaning of Section 1453.

Sec. 1396. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

Sec. 1397. A consideration may be executed or executory, in whole or in part. In so far as it is executory it is subject to the provisions of Chapter IV., of this Title.

Sec. 1398. When a consideration is executory it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person or regulated by any specified standard.

Sec. 1399. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

Sec. 1400. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

Sec. 1401. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes impossible of execution, such provision only is void.

Sec. 1402. A written instrument is presumptive evidence of a consideration.

Sec. 1403. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

TITLE II.

MANNER OF CREATING CONTRACTS.

Section 1407. Contracts, express or implied.
" *1408. Express contract, what.*
" *1409. Implied contract, what.*
" *1410. What contracts may be oral.*

Section 1411. Contract not in writing through fraud, may be enforced against fraudulent party.
" *1412. When contracts must be written.*
" *1413. Effect of writing.*
" *1414. Contract in writing, takes effect when.*
" *1415. Provisions of Chapter on Transfers of real property.*
" *1416. Corporate seal, how affixed.*
" *1417. Provisions abolishing seals made applicable.*

Sec. 1407. A contract is either express or implied.

Sec. 1408. An express contract is one, the terms of which are stated in words.

Sec. 1409. An implied contract is one, the existence and terms of which are manifested by conduct.

Sec. 1410. All contracts may be oral, except such as are specially required by statute to be in writing.

Sec. 1411. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

Sec. 1412. The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2267, of this Code.

3. An agreement made upon consideration of marriage other than a mutual promise to marry.

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept or receive part of such goods, chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, the price, and the names of the purchasers and person on whose account the sale is made, is a sufficient memorandum.

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation, or a commission.

Sec. 1413. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

Sec. 1414. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

Sec. 1415. The provisions of the Chapter on Transfers in General, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

Sec. 1416. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

Sec. 1417. All distinctions between sealed and unsealed instruments are abolished.

Sec. 1418. All instruments shall be as effectual without a seal as if the same had a seal attached thereto, but this section shall not apply to municipal or other corporations which by law are required to attest their action under seal.

TITLE III.

INTERPRETATION OF CONTRACTS.

Section 1423. Uniformity of interpretation.
“ *1424. Contracts, how to be interpreted.*
“ *1425. Intention of parties, how ascertained.*
“ *1426. Intention to be ascertained from language.*
“ *1427. Interpretation of written contracts.*
“ *1428. Writing, when disregarded.*
“ *1429. Effect to be given to every part of contract.*
“ *1430. Several contracts, when taken together.*
“ *1431. Interpretation in favor of contract.*
“ *1432. Words to be understood in usual sense.*
“ *1433. Technical words.*
“ *1434. Law of place.*
“ *1435. Contracts explained by circumstances.*
“ *1436. Contract restricted to its evident object.*
“ *1437. Interpretation in sense in which promisor believed promisee to rely.*
“ *1438. Particular clause subordinate to general intent.*
“ *1439. Contract, partly written and partly printed.*
“ *1440. Repugnancies, how reconciled.*
“ *1441. Inconsistent words rejected.*
“ *1442. Words to be taken most strongly against whom.*
“ *1443. Reasonable stipulations, when implied.*
“ *1444. Necessary incidents implied.*
“ *1445. Time of performance of contract.*
“ *1446. Time, when of essence.*
“ *1447. When joint and several.*
“ *1448. Same.*
“ *1449. Executed and executory contracts, what.*

Sec. 1423. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this Code.

Sec. 1424. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

Sec. 1425. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this Chapter are to be applied.

Sec. 1426. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Sec. 1427. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Title.

Sec. 1428. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

Sec. 1429. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

Sec. 1430. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

Sec. 1431. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

Sec. 1432. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Sec. 1433. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

Sec. 1434. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

Sec. 1435. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

Sec. 1436. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

Sec. 1437. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

Sec. 1438. Particular clauses of a contract are subordinate to its general intent.

Sec. 1439. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

Sec. 1440. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

Sec. 1441. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

Sec. 1442. In cases of uncertainty not removed by the preceding rules, the language of the contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

Sec. 1443. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

Sec. 1444. All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

Sec. 1445. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

Sec. 1446. Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

Sec. 1447. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

Sec. 1448. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

Sec. 1449. An executed contract is one, the object of which is fully performed. All others are executory.

TITLE IV.

UNLAWFUL CONTRACTS.

Section 1455. What is unlawful.
" *1456. Certain contracts unlawful.*
" *1457. Employes protected from negligence.*
" *1458. Contracts fixing damages, void.*
" *1459. Exception.*
" *1460. Restraints upon legal proceedings.*
" *1461. Contract in restraint of trade, void.*
" *1462. Exception in favor of sale of good will.*
" *1463. Exception in favor of partnership arrangements.*
" *1464. Contract in restraint of marriage, void.*

Sec. 1455. That is not lawful which is:

1. Contrary to an express provision of law.
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

Sec. 1456. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or for willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Sec. 1457. Any contract or agreement entered into by any person, company or corporation, with its servants or employes whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof, shall be absolutely null and void.

Sec. 1458. Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

Sec. 1459. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

Sec. 1460. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

Sec. 1461. Any contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than is provided for by the next two sections, is to that extent void.

Sec. 1462. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

Sec. 1463. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

Sec. 1464. Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

EXTINCTION OF CONTRACTS.

Chapter I. Contracts, how extinguished.
" *II. Rescission.*
" *III. Alteration and cancellation.*

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

Sec. 1470. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this Title.

CHAPTER II.

RESCISSION.

Section 1473. Rescission extinguishes contract.
" *1474. When party may rescind.*
" *1475. When stipulations against right to rescind do not defeat it.*
" *1476. Rescission, how effected.*

Sec. 1473. A contract is extinguished by its rescission.

Sec. 1474. A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud or undue influence, ex-

ercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

2. If, through the fault of the party as to whom he rescinds the consideration for his obligation fails, in whole or in part.

3. If such consideration becomes entirely void, from any cause.

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all other parties.

Sec. 1475. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of recission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

Sec. 1476. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promply, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract, or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

CHAPTER III.

ALTERATION AND CANCELLATION.

Section 1480. Alteration of verbal contract.
" *1481. Sealed contracts, how modified.*
" *1482. Extinction by cancellation, etc.*
" *1483. Extinction by unauthorized alteration.*
" *1484. Alteration of duplicate, not to prejudice.*

Sec. 1480. A contract not in writing may be altered in any respect by consent of the parties in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

Sec. 1481. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

Sec. 1482. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

Sec. 1483. The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act.

Sec. 1484. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART III.

OBLIGATIONS IMPOSED BY LAW.

Section 1487. Abstinence from injury.
" 1488. Fraudulent deceit.
" 1489. Deceit, what.
" 1490. Deceit upon the public, etc.
" 1491. Restoration of thing wrongfully acquired.
" 1492. When demand necessary.
" 1493. Responsibility for willful acts, negligence, etc.
" 1494. Other obligations.

Sec. 1487. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

Sec. 1488. One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

Sec. 1489. A deceit, within the meaning of the last section, is either :

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

2. The assertion as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.

3. The suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact : or,

4. A promise, made without any intention of performing it.

Sec. 1490. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

Sec. 1491. One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

Sec. 1492. The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

Sec. 1493. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

Sec. 1494. Other obligations are prescribed by Divisions One and Two, of this Code.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

Title I. Sale.
" *II. Exchange.*
" *III. Deposit.*
" *IV. Loan.*
" *V. Hiring.*
" *VI. Service.*
" *VII. Carriage.*
" *VIII. Trust.*
" *IX. Agency.*
" *X. Partnership.*
" *XI. Insurance.*
" *XII. Indemnity.*
" *XIII. Guaranty.*
" *XIV. Lien.*
" *XV. Negotiable instruments.*
" *XVI. General provisions.*

TITLE I.

SALE.

Chapter I. General provisions.
" *II. Rights and obligations of the seller.*
" *III. Rights and obligations of the buyer.*
" *IV. Sale by auction.*

CHAPTER I.

GENERAL PROVISIONS.

Article I. Sale.
" *II. Agreements for sale.*
" *III. Form of the contract.*

ARTICLE I.

SALE.

Section 1500. Sale, what.
" 1501. Subject of sale.

Sec. 1500. Sale is a contract by which, for a pecuniary consideration, called a price, one tranfers to another an interest in property.

Sec. 1501. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.

AGREEMENTS FOR SALE.

Section 1505. Agreement for sale.
" 1506. Agreement to sell.
" 1507. Agreement to buy.
" 1508. Agreement to sell and buy.
" 1509. What may be the subject of the contract.
" 1510. Agreement to sell real property.
" 1511. Usual common law covenants required by such contracts, when.
" 1512. Form of such covenants.

Sec. 1505. An agreement for sale is either :
1. An agreement to sell.
2. An agreement to buy ; or,
3. A mutual agreement to sell and buy.

Sec. 1506. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

Sec. 1507. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

Sec. 1508. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

Sec. 1509. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

Sec. 1510. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

Sec. 1511. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of "seizing," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances."

Sec. 1512. The covenants mentioned in the last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

ARTICLE III.

FORM OF THE CONTRACT.

Section 1515. Contract for sale of personal property.
" *1516. Contract to manufacture.*
" *1517. Contract for sale of real property.*

Sec. 1515. No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless:

1. The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,
2. The buyer accepts and receives part of the thing sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,
3. The buyer, at the time of sale, pays a part of the price.

Sec. 1516. An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section.

Sec. 1517. No agreement for the sale of real property, or of any interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

Article I. Rights and duties before delivery.
" *II. Delivery.*
" *III. Warranty.*

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

Section 1520. When a seller must act as depositary.
" 1521. When seller may re-sell.

Sec. 1520. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

Sec. 1521. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the Title on Liens.

ARTICLE II.

DELIVERY.

Section 1525. Delivery on demand.
" 1526. Delivery, where made.
" 1527. Expense of transportation.
" 1528. Notice of election as to delivery.
" 1529. Buyer's directions as to manner of sending thing sold.
" 1530. Delivery to be within reasonable hours.

Sec. 1525. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

Sec. 1526. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

Sec. 1527. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Sec. 1628. When either party to a contract of sale has an option as to the time, place or manner of delivery, he must give the other party reasonable notice of his choice, and if he does not give such notice within a reasonable time, his right of option is waived.

Sec. 1529. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

Sec. 1530. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.

WARRANTY.

Section 1535. Warranty, what.
" 1536. No implied warranty in mere contract of sale.
" 1537. Warranty of title to personal property.
" 1538. Warranty on sale by sample.
" 1539. When seller knows that buyer relies on his statements, etc.
" 1540. Merchandise not in existence.
" 1541. Manufacturer's warranty against latent defects.
" 1542. Thing bought for particular purpose.
" 1543. When thing cannot be examined by buyer.
" 1544. Trade marks.
" 1545. Other marks.
" 1546. Warranty on sale of written instrument.
" 1547. Warranty of provisions for domestic use.
" 1548. Warranty on sale of good will.
" 1549. Warranty upon judicial sale.
" 1550. Effect of general warranty.

Sec. 1535. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

Sec. 1536. Except as prescribed by this Article, a mere contract of sale or agreement to sell does not imply a warranty.

Sec. 1537. One who sells or agrees to sell personal property as his own, thereby warrants that he has a good and unincumbered title thereto.

Sec. 1538. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

Sec. 1539. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would to his knowledge destroy the buyer's inducement to buy.

Sec. 1540. One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

Sec. 1541. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

Sec. 1542. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

Sec. 1543. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

Sec. 1544. One who sells or agrees to sell any article to which there is affixed or attached a trade mark, thereby warrants that trade mark to be genuine and lawfully used.

Sec. 1545. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was, in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof.

Sec. 1546. One who sells or agrees to sell an instrument purporting to bind any one to the performance of any act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause.

Sec. 1547. One who makes a business of selling provisions for domestic use, warrants, by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

Sec. 1548. One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

Sec. 1549. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

Sec. 1550. A general warranty does not extend to defects inconsistent therewith, of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

Section 1555. Price, when to be paid.
" 1556. Right to inspect goods.
" 1557. Rights in case of breach of warranty.

Sec. 1555. A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

Sec. 1556. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it, and may rescind the contract if the seller refuses to permit him to do so.

Sec. 1557. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

Section 1562. Sale by auction, what.
" *1563. Sale, when complete.*
" *1564. Withdrawal of bid.*
" *1565. Sale under written conditions.*
" *1566. Rights of buyer upon sale without reserve.*
" *1567. By bidding.*
" *1568. Auctioneer's memorandum of sale.*

Sec. 1562. A sale by auction is a sale by public outcry to the highest bidder on the spot.

Sec. 1563. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

Sec. 1564. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

Sec. 1565. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own protection.

Sec. 1566. If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void.

Sec. 1567. The employment by a seller of any person to bid at a sale by auction, without the knowledge of the buyer, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

Sec. 1568. When property is sold by auction, an entry made by the auctioneer, in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves.

TITLE II.

EXCHANGE.

Section 1572. Exchange, what.
" 1573. Form of contract.
" 1574. Parties have rights and obligations of sellers and buyers.
" 1575. Warranty of money.

Sec. 1572. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another. neither thing, for both things, being money only.

Sec. 1573. The provisions of Section 1515 apply to all exchanges in which the value of the thing to be given by either party is two hundred dollars or more.

Sec. 1574. The provisions of the Title on Sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

Sec. 1575. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

DEPOSIT.

Chapter I. Deposit in general.
" II. Deposit for keeping.
" III. Deposit for exchange.

CHAPTER I.

DEPOSIT IN GENERAL.

Article I. Nature and creation of deposit.
" II. Obligations of the depositary.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

Section 1580. Deposit, kinds of.
" 1581. Voluntary deposit, how made.
" 1582. Involuntary deposit, how made.
" 1583. Same.
" 1584. Deposit for keeping, what.
" 1585. Deposit for exchange, what.

Sec. 1580. A deposit may be voluntary or involuntary; and for safe keeping, or for exchange.

Sec. 1581. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving, the depositary.

Sec. 1582. An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

Sec. 1583. The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so.

Sec. 1584. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

Sec. 1585. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

Section 1590. Depositary must deliver on demand.
" *1591. No obligation to deliver without demand.*
" *1592. Place of delivery.*
" *1593. Notice to owner of adverse claim.*
" *1594. Notice to owner of thing wrongfully detained.*
" *1595. Delivery of thing owned jointly, etc.*

Sec. 1590. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by Section 1593.

Sec. 1591. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

Sec. 1592. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

Sec. 1593. A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

Sec. 1594. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

Sec. 1595. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

Article I. General provisions.
" *II. Gratuitous deposit.*
" *III. Storage.*
" *IV. Innkeepers.*
" *V. Finding.*

ARTICLE I.

GENERAL PROVISIONS.

Section 1600. Depositor must indemnify depositary.
" *1601. Obligation of depositary of animals.*
" *1602. Obligations as to use of thing deposited.*
" *1603. Liability for damage arising from wrongful use.*
" *1604. Sale of thing in danger of perishing.*
" *1605. Injury to, or loss of thing deposited.*
" *1606. Service rendered by depositary.*
" *1607. Extent of his liability for negligence.*

Sec. 1600. A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

Sec. 1601. A depositary of living animals must provide them with suitable food and shelter and treat them kindly.

Sec. 1602. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

Sec. 1603. A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

Sec. 1604. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

Sec. 1605. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or ~~willfully~~ misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur.

Sec. 1606. So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the Title on Employment and Service.

Sec. 1607. The liability of a depositary for negligence can not exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

ARTICLE II.

GRATUITOUS DEPOSIT.

Section *1614. Gratuitous deposit, what.*
" *1615. Nature of involuntary deposit.*
" *1616. Degree of care required of gratuitous depositary.*
" *1617. His duties cease, when.*

Sec. 1614. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

Sec. 1615. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

Sec. 1616. A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited.

Sec. 1617. The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,
2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under Subdivision 2 of Section 1582, cannot give such notice until the emergency which gave rise to the deposit is past.

ARTICLE III.

STORAGE.

Section *1620. Deposit for hire.*
" *1621. Degree of care required of depositary for hire.*
" *1622. Rate of compensation for fraction of a week, etc.*

Section 1623. Termination of deposit.
" *1624. Same.*
" *1625. Sale for charges, how made.*
" *1626. Title vests in purchaser and balance paid to owner.*

Sec. 1620. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

Sec. 1621. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

Sec. 1622. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

Sec. 1623. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

Sec. 1624. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

Sec. 1625. Any storage or commission merchant receiving personal property from any person for storage, after keeping the same in store for ninety days, may, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction, to the highest bidder, for cash, first giving notice of the time, the terms, and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for four weeks next previous to the day of sale, and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto, in some other county, in this State. But no more of such property shall be sold tean is necessary to pay the charges due, together with the costs.

Sec. 1626. After paying the expenses of sale, including the publication of notice, the storage or commission merchant shall be authorized, out of the proceeds arising from the sale of the property, to retain the amount due him for storage or freight money advanced on any such property, and the excess, if any, shall be paid over to the person entitled to the proceeds thereof. All sales under this Article shall vest the title to the property sold in the purchaser thereof.

ARTICLE IV.

INNKEEPERS.

Section 1632. Innkeepers' liability.
" 1633. How exempted from liability.
" 1634. Lien of boarding and lodging house keepers.
" 1635. Sale of baggage by boarding or lodging house keepers.

Sec. 1632. An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn.

Sec. 1633. If an innkeeper keeps a fireproof safe, and gives notice to a guest, either personally or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of, or injury to, such articles, if not deposited with him, and not required by the guest for present use.

Sec. 1634. Hotel men, boarding house and lodging house keepers, shall have a lien upon the baggage and other property of value of their guests, or boarders, or lodgers, brought into such hotel, inn, or boarding or lodging house by such guests, or boarders, or lodgers, for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging, and room rent, and such extras as are furnished at their request, with the right to the possession of such baggage, or other property of value, until all such charges are paid.

Sec. 1635. Whenever any trunk, carpet bag, valise, box, bundle or other baggage, has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging house, as such, and has remained, or shall remain, unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale, may retain the charges for storage, if any, and the expense of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, or place in which said hotel, inn, boarding or lodging house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet bag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of said keeper, and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpet bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county.

ARTICLE V.

FINDING.

Section 1640. Obligation of finder.
" *1641. Finder to notify owner.*
" *1642. Claimant to prove ownership.*
" *1643. Reward, etc., to finder.*
" *1644. Finder may put thing found on storage.*
" *1645. When finder may sell the thing found.*
" *1646. How sale is to be made.*
" *1647. Surrender of thing to the finder.*
" *1648. Thing abandoned.*

Sec. 1640. One who finds a thing lost is not bound to take charge of it, but if he does so, he is thenceforth a depositary for the owner, with the rights and obligations of a depositary for hire.

Sec. 1641. If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

Sec. 1642. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

Sec. 1643. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

Sec. 1644. The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.

Sec. 1645. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or being found, refuses, upon demand, to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,
2. When the lawful charges of the finder amount to two-thirds of its value.

Sec. 1646. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

Sec. 1647. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

Sec. 1648. The provisions of this Article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

Sec. 1652. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

LOAN.

Chapter I. Loan for use.
" II. Loan for exchange.
" III. Loan of money.

CHAPTER I.

LOAN FOR USE.

Section 1655. Loan, what.
" 1656. Title to property lent.
" 1657. Care required of borrower.
" 1658. Same.
" 1659. Degree of skill.
" 1660. Borrower, when to repair injuries.
" 1661. Use of thing lent.
" 1662. Relending forbidden.
" 1663. Borrower, when to bear expenses.
" 1664. Lender liable for defects.
" 1665. Lender may require return of thing lent.
" 1666. When returnable without demand.
" 1667. Place of return.

Sec. 1655. A loan for use is a contract by which one gives another the temporary use and possession of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

Sec. 1656. A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

Sec. 1657. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

Sec. 1658. One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.

Sec. 1659. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

Sec. 1660. A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.

Sec. 1661. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

Sec. 1662. The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

Sec. 1663. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses, he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

Sec. 1664. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

Sec. 1665. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

Sec. 1666. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

Sec. 1667. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

Section 1672. Loan for exchange, what.
" *1673. Same.*
" *1674. Title to property lent.*
" *1675. Contract cannot be modified by lender.*
" *1676. Certain sections applicable.*

Sec. 1672. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

Sec. 1673. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all of the provisions of this Chapter.

Sec. 1674. By a loan for exchange, the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

Sec. 1675. A lender for exchange cannot require the borrower to fullfil his obligations at a time, or in a manner, different from that which was originally agreed upon.

Sec. 1676. Sections 1664, 1665 and 1666, apply to a loan for exchange.

CHAPTER III.

LOAN OF MONEY.

Section 1680. Loan of money.
" *1681. Loan to be repaid in current money.*
" *1682. Loan presumed to be on interest.*
" *1683. Interest, what.*
" *1684. Annual rate.*
" *1685. Legal interest.*
" *1686. Same.*
" *1687. Interest becomes part of principal, when.*
" *1688. Interest on judgment.*

Sec. 1680. A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the Chapter on Loan for Use.

Sec. 1681. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

Sec. 1682. Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

Sec. 1683. Interest is the compensation allowed by law or fixed by the parties, for the use, or forbearance, or detention of money.

Sec. 1684. When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

Sec. 1685. Unless there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of ten per cent. per annum, after they become due, on any instrument of writing except a judgment, and on moneys lent or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period less than a year, three hundred and sixty days are deemed to constitute a year.

Sec. 1686. Parties may agree in writing for the payment of any rate of interest, and it shall be allowed, according to the terms of the agreement, until the entry of judgment.

Sec. 1687. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Sec. 1688. Interest is payable on judgments recovered in the courts of this State, at the rate of ten per cent. per annum, and no greater rate, but such interest must not be compounded in any manner or form.

TITLE V.

HIRING.

Chapter I. Hiring in general,
" II. Hiring of real property.
" III. Hiring of personal property.

CHAPTER I.

HIRING IN GENERAL.

Section 1695. Hiring, what.
" 1696. Products of thing.
" 1667. Quiet possession.
" 1698. Degree of care, etc., on part of hirer.
" 1699. Must repair injuries, etc.
" 1700. Thing let for a particular purpose.
" 1701. When letter may terminate the hiring.
" 1702. When hirer may terminate the hiring.
" 1703. When hiring terminates.
" 1705. When terminated by death etc. of party.
" 1705. Apportionment of hire.

Sec. 1695. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

Sec. 1696. The products of a thing hired, during the hiring, belong to the hirer.

Sec. 1697. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

Sec. 1698. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

Sec. 1699. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

Sec. 1700. When a thing is let for a particular purpose, the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use in all events, or may treat the contract as thereby rescinded.

Sec. 1701. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

Sec. 1702. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring, reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

Sec. 1703. The hiring of a thing terminates:

1. At the end of the term agreed upon.

2. By the mutual consent of the parties.

3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired.

Sec. 1704. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

Sec. 1705. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

Section 1710. Lessor to make dwelling house fit for its purpose.
" *1711. When lessee may make repairs, etc.*
" *1712. Term of hiring when no limit is fixed.*
" *1713. Hiring of lodgings for indefinite term.*
" *1714. Renewal of lease by lessee's continued possession.*
" *1715. Notice to quit.*
" *1716. Rent, when payable.*
" *1717. Attornment of a tenant to a stranger.*
" *1718. Tenant must deliver notice served on him.*
" *1719. Letting parts of rooms forbidden.*

Sec. 1710. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable, except such as are mentioned in Section 1699.

Sec. 1711. If within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the costs of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

Sec. 1712. A hiring of real property, other than lodgings and dwelling houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

Sec. 1713. A hiring of lodgings or a dwelling house for an unspecified time is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

Sec. 1714. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month, when the rent is payable monthly, nor in any case one year.

Sec. 1715. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

Sec. 1716. When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

Sec. 1717. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

Sec. 1718. Every tenant who receives notice of any proceedings to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing.

Sec. 1719. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

Section 1725. Obligations of letter of personal property.
" *1726. Ordinary expenses.*
" *1727. Extraordinary expenses.*
" *1728. Return of thing hired.*
" *1729. Charter party, what.*

Sec. 1725. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

Sec. 1726. A hirer of personal property must bear all such expenses concerning it as might naturally be forseen to attend it during its use by him. All other expenses must be borne by the letter.

Sec. 1727. If a letter fails to fulfill his obligations, as prescribed by Section 1725, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

Sec. 1728. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

Sec. 1729. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

TITLE VI.

SERVICE.

Chapter I. Service with employment.
" *II. Particular employments.*
III. Service without employment.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

Article I. Definition of employment.
" *II. Obligations of the employer.*
" *III. Obligations of the employe.*
" *IV. Termination of employment.*

ARTICLE I.

DEFINITION OF EMPLOYMENT.

Sec. 1734. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employe, to do something for the benefit of the employer or of a third person.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

Section 1736. When employer must indemnify employe.
" *1737. When not.*
" *1738. Employer to indemnify for his own negligence.*

Sec. 1736. An employer must indemnify his employe, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employe, at the time of obeying such directions, believed them to be unlawful.

Sec. 1737. An employer is not bound to indemnify his employe for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

Sec. 1738. An employer must in all cases indemnify his employe for losses caused by the former's want of ordinary care.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYE.

Section 1743. Duties of gratuitous employe.
“ *1744. Same.*
“ *1745. Same.*
“ *1746. Duties of employe for reward.*
“ *1747. Duties of employe for his own benefit.*
“ *1748. Contracts for service limited to two years.*
“ *1749. Employe must obey employer.*
“ *1750. Employe to conform to usage.*
“ *1751. Degree of skill required.*
“ *1752. Must use what skill he has.*
“ *1753. What belongs to employer.*
“ *1754. Duty to account.*
“ *1755. Employe not bound to deliver without demand.*
“ *1756. Reference to be given to employers.*
“ *1757. Responsibility of employe for substitute.*
“ *1758. Responsibility for negligence.*
“ *1759. Surviving employe.*
“ *1760. Confidential employment.*

Sec. 1743. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

Sec. 1744. One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

Sec. 1745. A gratuitous employe, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

Sec. 1746. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

Sec. 1747. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

Sec. 1748. A contract to render personal service, other than a contract of apprenticeship, as provided in the Chapter on Apprentices, cannot be enforced against the employe beyond the term of two years from the commencement of service under it; but if the employe voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

Sec. 1749. An employe must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employe.

Sec. 1750. An employe must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

Sec. 1751. An employe is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

Sec. 1752. An employe is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

Sec. 1753. Everything which an employe acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

Sec. 1754. An employe must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

Sec. 1755. An employe who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employe himself.

Sec. 1756. An employe who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference.

Sec. 1757. An employe who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

Sec. 1758. An employe who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

Sec. 1759. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

Sec. 1760. The obligations peculiar to confidential employments are defined in the Title on Trusts.

ARTICLE IV.

TERMINATION OF EMPLOYMENT

Section 1765. Termination by death, etc. of employer.
" *1766. Employment, how terminated.*
" *1767. Continuance of service in certain cases.*
" *1768. Termination at will.*
" *1769. Termination by employer for fault.*
" *1770. Termination by employe for fault.*
" *1771. Compensation of employe dismissed for cause.*
" *1772. Compensation of employe leaving for cause.*

Sec. 1765. Every employment in which the power of the employe is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

Sec. 1766. Every employment is terminated:

1. By the expiration of its appointed term.
2. By the extinction of its subject.
3. By the death of the employe; or,
4. By his legal incapacity to act as such.

Sec. 1767. An employe, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employe for such service according to the terms of the contract of employment.

Sec. 1768. An employment having no specified term, may be terminated at the will of either party, on notice to the other, except where otherwise provided by this Title.

Sec. 1769. An employment, even for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employe in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

Sec. 1770. An employment, even for a specified term, may be terminated by the employe at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employe.

Sec. 1771. An employe, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

Sec. 1772. An employe who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered, bear to the services which he was to render as full performance.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

Article I. Master and servant.
" *II. Agents.*
" *III. Factors.*

ARTICLE I.

MASTER AND SERVANT.

Section 1777. Servant, what.
" *1778. Term of hiring.*
" *1779. Same.*
" *1780. Renewal of hiring.*
" *1781. Time of service.*
" *1782. Servant to pay over without demand.*
" *1783. When servant may be discharged.*

Sec. 1777. A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

Sec. 1778. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

Sec. 1779. In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

Sec. 1780. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

Sec. 1781. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

Sec. 1782. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound without orders from his master, to send anything to him through another person.

Sec. 1783. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.

AGENTS.

Section 1788. Agent to conform to his authority.
" *1789. Must keep his principal informed.*
" *1790. Collecting agent.*
" *1791. Responsibility of sub-agent.*

Sec. 1788. An agent must not exceed the limits of his actual authority, as defined by the Title on Agency.

Sec. 1789. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

Sec. 1790. An agent employed to collect a negotiable instrument mnst collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

Sec. 1791. A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.

FACTORS.

Section 1796. Factor, what.
" *1797. Obedience required from factor.*
" *1798. Sales on credit.*
" *1799. Liability of factor under guaranty commission.*
" *1800. Factor cannot relieve himself from liability.*

Sec. 1796. A factor is an agent, who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

Sec. 1797. A factor must obey the instructions of his principal to the same extent as any other employe, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

Sec. 1798. A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the terms of credit, may not extend it.

Sec. 1799. A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

Sec. 1800. A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

Sec. 1805. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses, incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

TITLE VII.

CARRIAGE.

Chapter I. Carriage in general.
" II. Carriage of persons.
" III. Carriage of property.
" IV. Carriage of messages.
" V. Common Carriers.

CHAPTER I.

CARRIAGE IN GENERAL.

Section 1810. Contract of carriage.
" 1811. Obligations of gratuitous carriers.
" 1812. Obligations of gratuitous carrier who has begun to carry.

Sec. 1810. The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

Sec. 1811. Carriers without reward are subject to the same rules as employes, without reward, except so far as is otherwise provided by this Title.

Sec. 1812. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced his carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

Article I. Gratuitous carriage.
" *II. Carriage for reward.*

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

Sec. 1815. A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.

CARRIAGE FOR REWARD.

Section 1817. General duties of carrier.
" *1818. Vehicles.*
" *1819. Not to overload his vehicle.*
" *1820. Treatment of passengers.*
" *1821. Rate of speed and delays.*

Sec. 1817. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

Sec. 1818. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

Sec. 1819. A carrier of persons for reward must not overcrowd or overload his vehicle.

Sec. 1820. A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

Sec. 1821. A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

Article I. General definitions.
" II. Obligations of the carrier.
" III. Bill of lading.
" IV. Freightage.

ARTICLE I.

GENERAL DEFINITIONS.

Sec. 1825. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

Section. 1830. Care and diligence required of carriers.
" 1831. Carrier to obey directions.
" 1832. Conflict of orders.
" 1833. Delivery of freight.
" 1834. Place of delivery.
" 1835. Obligations of carrier when freight is not delivered to consignee.
" 1836. How carrier may terminate his liability.

Sec. 1830. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

Sec. 1831. A carrier must comply with the directions of the consignor or consignee to the same extent as an employe is bound to comply with those of his employer.

Sec. 1832. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

Sec. 1833. A carrier of property must deliver it to the consignee at the place to which it is addressed, in the manner usual at that place.

Sec. 1834. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

2. If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

Sec. 1835. If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest postoffice.

Sec. 1836. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

ARTICLE III.

BILL OF LADING.

Section 1840. Bill of lading, what.
" *1841. Bill of lading negotiable.*
" *1842. Same.*
" *1843. Effect of bill of lading on rights, etc. of carrier.*
" *1844. Bills of lading to be given to consignor.*
" *1845. Carrier exonerated by delivery according to bill of lading.*
" *1846. Carrier may demand surrender of bill of lading before delivery.*

Sec. 1840. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

Sec. 1841. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

Sec. 1842. When a bill of lading is made to "bearer" or in equivalent terms, a simple transfer thereof, by delivery, conveys the same title as an indorsement.

Sec. 1843. A bill of lading does not alter the rights or obligations of the carrier as defined in this Chapter, unless it is plainly inconsistent therewith.

Sec. 1844. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damage thereby occasioned.

Sec. 1845. A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

Sec. 1846. When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender or a reasonable indemnity against claims thereon, before delivering the freight.

ARTICLE V.

FREIGHTAGE.

Section 1850. When freightage is to be paid.
" *1851. Consignor, when liable for freightage.*
" *1852. Consignee, when liable.*
" *1853. Natural increase of freight.*
" *1854. Apportionment by contract.*
" *1855. Same.*
" *1856. Apportionment according to distance.*
" *1857. Freight carried further than agreed, etc.*
" *1858. Carrier's lien for freightage.*

Sec. 1850. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

Sec. 1851. The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

Sec. 1852. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

Sec. 1853. No freightage can be charged upon the natural increase of freight.

Sec. 1854. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

Sec. 1855. If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

Sec. 1856. If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

Sec. 1857. If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on demand of the consignee, at the place and time of its arrival.

Sec. 1858. A carrier has a lien for freightage, which is regulated by the Title on Liens.

CHAPTER IV.

CARRIAGE OF MESSAGES.

Section 1862. Obligations of carriers of messages.
" 1863. Degree of care and diligence required.

Sec. 1862. A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route, toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier.

Sec. 1863. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

CHAPTER V.

COMMON CARRIERS.

Article I. Common carriers in general.
" II. Common carriers of persons.
" III. Common carriers of property.
" IV. Common carriers of messages.

ARTICLE I.

COMMON CARRIERS IN GENERAL.

Section 1867. Common carrier, what.
" *1868. Obligation to accept freight.*
" *1869. Obligation not to give preference.*
" *1870. What preferences he must give.*
" *1871. Starting.*
" *1872. Compensation.*
" *1873. Obligations of carrier altered only by agreement.*
" *1874. Certain agreements void.*
" *1875. Effect of written contract.*
" *1876. When not liable for loss.*

Sec. 1867. Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry.

Sec. 1868. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

Sec. 1869. A common carrier must not give preference in time, price, or otherwise to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this State, shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessels at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney of the county in the name of the State, and paid into the common school fund of the said county.

Sec. 1870. A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this State.

Sec. 1871. A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

Sec. 1872. A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

Sec. 1873. The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

Sec. 1874. A common carrier cannot be exonerated by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

Sec. 1875. A passenger, consignor, or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

Sec. 1876. A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he is informed at the time of its receipt of the value of its contents.

ARTICLE II.

COMMON CARRIERS OF PERSONS.

Section 1880. Obligation to carry baggage.
" *1881. Baggage, what.*
" *1882. Liability for baggage.*
" *1883. Baggage, how carried and delivered.*
" *1884. Obligation to provide vehicles.*
" *1885. Seats for passengers.*
" *1886. Regulations for conduct of business.*
" *1887. Fare, when payable.*
" *1888. Ejection of passengers.*
" *1889. Fare not payable after ejection.*
" *1890. Carrier's lien.*

Sec. 1880. A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger, without charge, except for an excess of weight over one hundred pounds to a passenger; but if such carrier be a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage.

Sec. 1881. Baggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

Sec. 1882. The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

Sec. 1883. A common carrier must deliver every passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where baggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

Sec. 1884. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

Sec. 1885. A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

Sec. 1886. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

Sec. 1887. A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

Sec. 1888. A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling house.

Sec. 1889. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

Sec. 1890. A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the Title on Liens.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

Section 1895. Liability of inland carriers for loss.
" *1896. When exemptions do not apply.*
" *1897. Liability for delay.*
" *1898. Consignor of valuables to declare their nature.*
" *1899. Delivery of freight beyond usual route.*
" *1900. Proof to be given in case of loss.*
" *1901. Carrier's services, other than carriage and delivery.*
" *1902. Sale of perishable property for freight.*

Sec. 1895. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability, pursuant to Sections 1585 to 1589, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, weakness, or a spontaneous action of the property itself.

2. The act of a public enemy of the United States, or of this State.

3. The act of the law; or,

4. An irresistible superhuman cause.

Sec. 1896. A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

Sec. 1897. A common carrier is lia ble for delay only when it is caused by his want of ordinary care and diligence.

Sec. 1898. A common carrier of gold, silver, platina, or of precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight, nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

Sec. 1899. If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route, in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

Sec. 1900. If freight addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

Sec. 1901. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the Titles on Deposit and Service.

Sec. 1902. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market, to satisfy his lien for freightage.

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

Section 1907. Order of transmission of telegraphic messages.
" *1908. Order in other cases.*
" *1909. Damages when message is refused or postponed.*

Sec. 1907. A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this State, on public business.
2. Messages giving information relating to the sickness or death of any person.
3. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.
4. Other messages in the order in which they were received.

Sec. 1908. A common carrier of messages, otherwise than by telegraph or telephone, must transmit them in the order in which he receives them, except messages from agents of the United States or of this State, on public business, to which he must always give priority.

Sec. 1909. Every person whose message is refused or postponed, contrary to the provisions of this Chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUSTS.

Chapter I. Trusts in general.
" II. Trusts for the benefit of third persons.

CHAPTER I.

TRUSTS IN GENERAL.

Article I. Nature and creation of a trust.
" II. Obligations of trustees.
" III. Obligations of third persons.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

Section 1915. Trusts classified.
" 1916. Voluntary trust, what.
" 1917. Involuntary trust, what.
" 1918. Parties to the contract.
" 1919. What constitutes one a trustee.
" 1920. For what purpose a trustee may be created.
" 1921. Voluntary trust, how created as to trustor.
" 1922. How created as to trustee.
" 1923. Involuntary trustee, who is.
" 1924. Involuntary trust, resulting from negligence, etc.

Sec. 1915. A trust is either:

1. Voluntary; or,

2. Involuntary.

Sec. 1916. A voluntary trust is an obligation arising out of a personal confidence reposed in and voluntarily accepted by one for the benefit of another.

Sec. 1917. An involuntary trust is one which is created by operation of law.

Sec. 1918. The person whose confidence creates the trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

Sec. 1919. Every person who voluntary assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this Chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control:

Sec. 1920. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the Titles on Uses and Trusts and on Transfers.

Sec. 1921. Subject to the provisions of Section 786, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,

2. The subject, purpose, and beneficiary of the trust.

Sec. 1922. Subject to the provisions of Section 786, a voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty:

1. His acceptance of the trust, or his acknowledgement, made upon sufficient consideration, of its existence; and,

2. The subject, purpose, and beneficiary of the trust.

Sec. 1923. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

Sec. 1924. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other or better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

Section 1930. Trustee's obligation to good faith.

" 1931. Trustee not to use property for his own benefit.

" 1932. Certain transactions forbidden.

Section 1933. Trustee's influence not to be used for his advantage.
" *1934. Trustee not to assume a trust adverse to interest of beneficiary.*
" *1935. To disclose adverse interest.*
" *1936. Trustee guilty of fraud, when.*
" *1937. Presumption against trustees.*
" *1938. Trustee mingling trust property with his own.*
" *1939. Measure of liability for breach of trust.*
" *1940. Same.*
" *1941. Co-trustees, how far liable for each other.*

Sec. 1930. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Sec. 1931. A trustee may not use or deal with the trust property for his own benefit, or for any other purpose unconnected with the trust, in any manner.

Sec. 1932. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so.

2. When the beneficiary, not having capacity to contract the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

Sec. 1933. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

Sec. 1934. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

Sec. 1935. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

Sec, 1936. Every violation of the provisions of the preceding sections of this Article is a fraud against the beneficiary of the trust.

Sec. 1937. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

Sec. 1938. A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

Sec. 1939. A trustee who uses or disposes of the trust property contrary to Section 1931, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it with its fruits, or to account for its proceeds, with interest.

Sec. 1940. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

Sec. 1941. A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

Section 1943. Third person, when involuntary trustee.
" *1944. When third person must see to application of trust property.*

Sec. 1943. Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.

Sec. 1944. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

Article I. Nature and creation of the trust.
" *II. Obligations of trustees.*
" *III. Powers of trustees.*
" *IV. Rights of trustees.*
" *V. Termination of the trust.*
" *VI. Succession or appointment of new trustees.*

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

Section 1950. Who are trustees within scope of this Chapter.
" *1951. Creation of trust.*
" *1952. Trustees appointed by court.*
" *1953. Declaration of trust.*
" *1954. Same.*

Sec. 1950. The provisions of this Chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

Sec. 1951. The mutual consent of a trustor and trustee, creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

Sec. 1952. When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section.

Sec. 1953. The nature, extent and object of a trust are expressed in the declaration of trust.

Sec. 1954. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

Section 1958. Trustees must obey declaration of trust.
" *1959. Degree of care and diligence in execution of trust.*
" *1960. Duty of trustee as to appointment of successor.*
" *1961. Investment of money by trustee.*
" *1962. Interest, simple or compound, on omission to invest trust moneys.*
" *1963. Purchase by trustee of claims against trust fund.*

Sec. 1958. A trustee must fulfill the purpose of thetrust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested in the same manner, and to the same extent as an employe.

Sec. 1959. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

Sec. 1960. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

Sec. 1961. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

Sec. 1962. If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

Sec. 1963. A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.

POWERS OF TRUSTEES.

Section 1965. Trustee's powers as agent.
" 1966. All must act.
" 1967. Discretionary powers.

Sec. 1965. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this Chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

Sec. 1966. Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

Sec. 1967. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.

RIGHTS OF TRUSTEES.

Section 1970. Indemnification of trustee.
" 1971. Compensation of trustee.
" 1972. Involuntary trustee.

Sec. 1970. A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

Sec. 1971. When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances.

Sec. 1972. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this Article.

ARTICLE V.

TERMINATION OF THE TRUST.

Section 1975. Trust, how extinguished.
" *1976. Not revocable.*
" *1977. Trustee's office, how vacated.*
" *1978. Trustee, how discharged.*
" *1979. Removal by District Court.*

Sec. 1975. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

Sec. 1976. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

Sec. 1977. The office of a trustee is vacated :

1. By his death ; or,
2. By his discharge.

Sec. 1978. A trustee can be discharged from his trust only as follows :

1. By the extinction of the trust.
2. By the completion of his duties under the trust.
3. By such means as may be prescribed by the declaration of trust.
4. By the consent of the beneficiary, if he had capacity to contract.
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind ; or,
6. By the District Court.

Sec. 1979. The District Court may remove any trustee who has violated or is unfit to execute the trust ; or may accept the resignation of a trustee.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

Section 1982. Vacant trusteeship filled by court.
" *1983. Survivorship between co-trustees.*
" *1984. District Court as trustee.*

Sec. 1982. The District Court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

Sec. 1983. On the death, renunciation, or discharge of one of several co-trustees, the trust survives to the others.

Sec. 1984. When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the District Court of the county where the trust property, or some portion thereof is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

TITLE IX.

AGENCY.

Chapter I. Agency in general.
" *II. Particular agencies.*

CHAPTER I.

AGENCY IN GENERAL.

Article I. Definition of agency.
" *II. Authority of agents.*
" *III. Mutual obligations of principals and third persons.*
" *IV. Obligations of agents to third persons.*
" *V. Delegation of agency.*
" *VI. Termination of ageucy.*

ARTICLE I.

DEFINITION OF AGENCY.

Section 1987. Agency, what.
" *1688. Who may appoint, and who may be an agent.*
" *1989. Agents, general or special.*
" *1990. Agency, actual or ostensible.*
" *1991. Actual agency.*
" *1992. Ostensible agency.*

Sec. 1987. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

Sec. 1988. Any person having capacity to contract may appoint an agent, and any person may be an agent.

Sec. 1989. An agent for a particular act or transaction is called a special agent. All others are general agents.

Sec. 1990. An agency is either actual or ostensible.

Sec. 1991. An agency is actual when the agent is really employed by the principal.

Sec. 1992. An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.

ARTICLE II.

AUTHORITY OF AGENTS.

Section 1995. What authority may be conferred.
" *1996. Agent may perform acts required of principal by Code.*
" *1997. Agent cannot have authority to defraud principal.*
" *1998. Creation of agency.*
" *1999. Consideration unnecessary.*
" *2000. Form of authority.*
" *2001. Ratification of agent's act.*
" *2002. Ratification of part of a transaction.*
" *2003. When ratification void.*
" *2004. Ratification not to work injury to third persons.*
" *2005. Rescission of ratification.*
" *2006. Measure of agent's authority.*
" *2007. Actual authority, what.*
" *2008. Ostensible authority, what.*
" *2009. Agent's authority as to persons having notice of restrictions upon it.*
" *2010. Agent's necessary authority.*
" *2011. Agent's power to disobey instruciions.*
" *2012. Authority to be construed by its specific, rather than by its general terms.*
" *2013. Exceptions to general authority.*
" *2014. What included in authority to sell personal property.*
" *2015. What included in authority to sell real property.*
" *2016. Authority of general agent to receive price of property.*
" *2017. Authority of special agent to receive price.*

Sec. 1995. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

Sec. 1996. Every act which, according to this Code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

Sec. 1997. An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals to be, a fraud upon the principal.

Sec. 1998. An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

Sec. 1999. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

Sec. 2000. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

Sec. 2001. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or restraining the benefit of the act, with notice thereof.

Sec. 2002. Ratification of part of an indivisible transaction is a ratification of the whole.

Sec. 2003. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

Sec. 2004. No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

Sec. 2005. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

Sec. 2006. An agent has such authority as the principal, actually or ostensibly, confers upon him.

Sec. 2007. Actual authority is such as the principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

Sec. 2008. Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

Sec. 2009. Every agent has actually such authority as is defined by this Title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

Sec. 2010. An agent has authority :

1. To do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency ; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which

cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

Sec. 2011. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal, that he should do so and there is not time to communicate with the principal.

Sec. 2012. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

Sec. 2013. An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so.
2. To define the scope of his agency; or,
3. To do any act which a trustee is forbidden to do by Article II., Chapter I., of the last Title.

Sec. 2014. An authority to sell personal property includes authority to warrant the title of the principal, and the quantity and quality of the property.

Sec. 2015. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

Sec. 2016. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

Sec. 2017. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PNRSONS.

Section 2020. Principal, how affected by acts of agent within the scope of his authority.
" *2021. Principal, when bound by incomplete execution of authority.*
" *2022. Notice to agent, when notice to principal.*
" *2023. Obligation of principal when agent exceeds his authority.*
" *2024. For acts done under a mere ostensible authority.*
" *2025. When exclusive credit is given to agent.*
" *2026. Rights of person who deals with agent without knowledge of agency.*
" *2027. Instrument intended to bind principal does bind him.*
" *2028. Principal's responsibility for agent's negligence or omission.*
" *2029. Principal's responsibility for wrongs willfully committed by the agent.*

Sec. 2020. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

Sec. 2021. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

Sec. 2022. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith, and the exercise of ordinary care and diligence, to communicate to the other.

Sec. 2023. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

Sec. 2024. A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value, upon the faith thereof.

Sec. 2025. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

Sec. 2026. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

Sec. 2027. An instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

Sec. 2028. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

Sec. 2029. A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

Section 2033. Warranty of authority.
" *2034. Agent's responsibility to third persons.*
" *2035. Obligation of agent to surrender property to third person.*
" *2036. Agent not having capacity to contract.*

Sec. 2033. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

Sec. 2034. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no other:

1. When, with his consent, credit is given to him personally in a transaction.
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
3. When his acts are wrongful in their nature.

Sec. 2035. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice to the owner, he delivers it to his principal.

Sec. 2036. The provisions of this Article are subject to the provisions of Part I., Division First, of this Code.

ARTICLE V.

DELEGATION OF AGENCY.

Section 2040. Agent's delegation of his powers.
" 2041. Agent's unauthorized employment of sub-agent.
" 2042. Sub-agent rightfully appointed, represents principal.

Sec. 2040. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others :

1. When the act to be done is purely mechanical.
2. When it is such as the agent cannot himself, and the sub-agent can lawfully perform.
3. When it is the usage of the place to delegate such powers ; or,
4. When such delegation is specially authorized by the principal.

Sec. 2041. If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

Sec. 2042. A sub-agent lawfully appointed, represents the principal in like manner with the original agent ; and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

Section 2044. Termination of agency.
" 2045. Same.

Sec. 2044. An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term.
2. The extinction of its subject.
3. The death of the agent.
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

Sec. 2045. Unless the power of the agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof, by:

1. Its revocation by the principal.
2. His death; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

Article I. Auctioneers.
" II. Factors.

ARTICLE I.

AUCTIONEERS.

Section 2047. Auctioneer's authority from the seller.
" 2048. Auctioneer's authority from the bidder.

Sec. 2047. An auctioneer, in the absence of special authority or usage to the contrary, has authority from the seller only as follows :

1. To sell by public auction to the highest bidder.
2. To sell for cash only, except such articles as are usually sold on credit at auction.
3. To warrant in like manner with other agents to sell according to Section 2014.
4. To prescribe reasonable rules and terms of sale.
5. To deliver the thing sold, upon payment of the price.
6. To collect the price ; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

Sec. 2048. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the Title on Sale.

ARTICLE II.

FACTORS.

Section 2050. Factor, what.
" *2051. Actual authority of factor.*
" *2052. Ostensible authority.*

Sec. 2050. A factor is an agent, as defined by Section 1796.

Sec. 2051. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted :

1. To insure property consigned to him uninsured.

2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same ; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

Sec. 2052. A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

TITLE X.

PARTNERSHIP.

Chapter I. Partnership in general.
" *II. General partnership.*
" *III. Special partnership.*
" *IV. Mining partnership.*

CHAPTER I.

PARTNERSHIP IN GENERAL.

Article I. What constitutes a partnership.
" *II. Partnership property.*
" *III. Mutual obligations of partners.*
" *IV. Renunciation of partnership.*

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

Section 2056. Partnership, what.
" *2057. Formation of partnership.*

Sec. 2056. Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

Sec. 2057. A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

ARTICLE II.

PARTNERSHIP PROPERTY.

Section 2060. Partnership property, what.
" 2061. Partner's interest in partnership property.
" 2062. Partner's share in profits and losses.
" 2063. When division of losses implied.
" 2064. Partner may require application of partnership property to payment of debts.
" 2065. What property is partnership property by presumption.

Sec. 2060. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

Sec. 2061. The interest of each member of a partnership extends to every portion of its property.

Sec. 2062. In the absence of any agreement on the subject, the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

Sec. 2063. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

Sec. 2064. Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

Sec. 2065. Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.

MUTUAL OBLIGATION OF PARTNERS.

Section 2070. Partners trustees for each other.
" 2071. Good faith to be observed between them.
" 2072. Mutual liability of partners to account.
" 2073. No compensation for services to firm.

Sec. 2070. The relations of partners are confidential. They are trustees for each other within the meaning of Chapter I., of the Title on Trusts, and their obligations as such trustees are defined by that Chapter.

Sec. 2071. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his co-partners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Sec. 2072. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

Sec. 2073. A partner is not entitled to any compensation for services rendered by him to the partnership, unless there is an agreement to that effect.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

Section 2078. Renunciation of future profits exonerates from liability.
" *2079. Effect of renunciation.*

Sec. 2078. A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person and to his own co-partners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

Sec. 2079. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his co-partners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

Article I. What is a general partnership.
" *II. Powers and authority of partners.*
" *III. Mutual obligations of partners.*
" *IV. Liability of partners.*
" *V. Termination of partnership.*
" *VI. Liquidation.*
" *VII. Of the use of fictitious names.*

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

Sec. 2082. Every partnership that is not formed in accordance with the law concerning special or mining partnerships, and every special partnership so far only as the general partners are concerned, is a general partnership.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

Section 2085. Power of majority of partners.
" *2086. Authority of individual partner.*
" *2087. What authority partner has not.*
" *2088. Partner's acts in bad faith, when ineffectual.*

Sec. 2085. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

Sec. 2086. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his co-partners by an agreement in writing.

Sec. 2087. A partner, as such, has not authority to do any of the following acts, unless his co-partners have wholly abandoned the business to him, or are incapable of acting :

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors.
2. To dispose of the good will of the business.
3. To dispose of the whole of the partnership property at once.
4. To do any act which would make it impossible to carry on the ordinary business of the partnership.
5. To confess a judgment.
6. To submit a partnership claim to arbitration.
7. To do any other act not within the scope of the preceding section.

Sec. 2088. A partner is not bound by any act of a co-partner, in bad faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

Section 2093. Profits of individual partner.
" *2094. In what business partner may not engage.*
" *2095. In what he may engage.*
" *2096. Must account to firm for profits.*

Sec. 2093. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

Sec. 2094. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

Sec. 2095. A partner may engage in any separate business, except as otherwise provided by the last two sections.

Sec. 2096. A general partner transacting business contrary to the provisions of this Article, may be required by any copartner to account to the partnership for the profits of such business.

ARTICLE IV.

LIABILITY OF PARTNERS.

Section 2101. Liability of partners to third persons.
" *2102. Liability for each other's acts as agents.*
" *2103. Liability of one held out as partner.*
" *2104. No one liable as partner unless partner or held out as such.*

Sec. 2101. Every general partner is liable to third persons for all the obligations of the partnership, jointly with his copartners.

Sec. 2102. The liability of general partners for each other's acts is defined by the Title on Agency.

Sec. 2103. Any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership.

Sec. 2104. No one is liable as a partner who is not such in fact, except as provided in the last section.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

Section 2109. Duration of partnership.
" *2110. Total dissolution of partnership.*
" *2111. Partial dissolution.*
" *2112. Partner entitled to dissolution.*
" *2113. Notice of termination.*
" *2114. Notice by change of name.*

Sec. 2109. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

Sec. 2110. A general partnership is dissolved as to all the partners:

1. By lapse of the time prescribed by agreement for its duration.

2. By the expressed will of any partner, if there is no such agreement.

3. By the death of a partner.

4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property.

5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,

6. By a judgment of dissolution.

Sec. 2111. A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his co-partners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

Sec. 2112. A general partner is entitled to a judgment of dissolution:

1. When he, or another partner, becomes legally incapable of contracting.

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

3. When the business of the partnership can be carried on only at a permanent loss.

Sec. 2113. The liability of a general partner for the acts of his co-partners, continues, even after a dissolution of the co-partnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a newspaper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm.

Sec. 2114. A change of the partnership name, which plainly indicates the withdrawal of a partner, is a sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

ARTICLE VI.

LIQUIDATION.

Section 2119. Powers of partners after dissolution.
" 2120. Who may act in liquidation.
" 2121. Who may not act in liquidation.
" 2122. Powers of partners in liquidation.
" 2123. What partner may do in liquidation.

Sec. 2119. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this Article.

Sec. 2120. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

Sec. 2121. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof.

Sec. 2122. A partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

Sec. 2123. A partner authorized to act in liquidation may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment when an action thereon is barred under the provisions of the Code of Civil Procedure.

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

Section 2128. Fictitious name.
" 2129. Certificate, when to be filed.
" 2130. New certificates on change of partner.
" 2131. Register of such firms to be kept by county clerk.
" 2132. Certified copies of register, and proof of publication, to be evidence.

Sec. 2128. Every partnership transacting business in this State under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

Sec. 2129. The certificate filed with the clerk, as provided in Section 2128, must be signed by the partners and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section, must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed, and the publication made within six months after the passage of this Code. Persons doing business as partners contrary to the provisions of this Article, or any assignee thereof, shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this State, until they have first filed the certificate and made the publication herein required.

Sec. 2130. On every change in the members of a partnership transacting business in this State under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, a new certificate must be filed with the county clerk, and a new publication made, as required by this Article, on the formation of such partnership.

Sec. 2131. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this Article, entering in alphabetical order the name of every such partnership, and of each partner therein.

Sec. 2132. Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER III.

SPECIAL PARTNERSHIP.

Article I. Formation of partnership.
" II. Powers, rights, and duties of the partners.
" III. Liability of partners.
" IV. Alteration and dissolution of the partnership.

ARTICLE I.

FORMATION OF PARTNERSHIP.

Section 2137. Formation of special partnership.
" 2138. Of what to consist.
" 2139. Certified statement.
" 2140. Acknowledged and recorded. False statement.
" 2141. Affidavit as to sums contributed.
" 2142. No partnership until compliance.
" 2143. Certificate to be published.
" 2144. Affidavit of publication filed.
" 2145. Renewal of special partnership.

Sec. 2137. A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in this Chapter, for the transaction of any business except banking or insurance.

Sec. 2138. A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

Sec. 2139. Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the partners, and their residences, specifying which are general and which are special partners.
4. The amount of capital which each special partner has contributed to the common stock.
5. The periods at which such partnership will begin and end.

Sec. 2140. Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, and filed and recorded in the office of the county clerk of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inpection; and if the partnership has places of business situated in different counties, a copy of the certifiicate, certified by the county clerk in whose office it is recorded, must be filed and recorded in like manner, in the office of the county clerk in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

Sec. 2141. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed and recorded in the same office with the original certificate.

Sec. 2142. No special partnership is formed until the provisions of the last five sections are complied with.

Sec. 2143. The certificate mentioned in this Article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is recorded, and if no newspaper is there printed, then in a newspaper in the county nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of recording the certificate. In case such publication is not so made, the partnership must be deemed general.

Sec. 2144. An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher, or chief clerk of the newspaper in which such publication is made, may be filed with the county clerk with whom the original certificate was recorded, and is presumptive evidence of the facts therein stated.

Sec. 2145. Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation. If not renewed, it shall be deemed a general partnership.

ARTICLE II.

POWERS, RIGHTS, AND DUTIES OF THE PARTNERS.

Section 2150. Who to do business.
" *2151. Special partners may advise.*
" *2152. May loan money. Insolvency.*
" *2153. General partners may sue and be sued.*
" *2154. Withdrawal of capital.*
" *2155. Interest and profits.*
" *2156. Result of withdrawing capital.*
" *2157. Preferential transfer void.*

Sec. 2150. The general partners only have authority to transact the business of a special partnership.

Sec. 2151. A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management.

Sec. 2152. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it, must be postponed until all other creditors are satisfied.

Sec. 2153. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

Sec. 2154. No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

Sec. 2155. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

Sec. 2156. If a special partner withdraws capital from the firm, contrary to the provisions of this Article, he thereby becomes a general partner.

Sec. 2157. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

ARTICLE III.

LIABILITY OF PARTNERS.

Section 2162. Liability of partners.
" 2163. Of special partners.
" 2164. Liability for unintentional act.
" 2165. Who may question existence of special partnership.

Sec. 2162. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

Sec. 2163. The contribution of a special partner to the capital of the firm. and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith or the published announcement thereof, he is liable, as a general partner, to all creditors of the firm.

2. If he has willfully interfered with the business of the firm, except as permitted in Article II., of this Chapter, he is liable in like manner; or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of Article II., of this Chapter, he is liable in like manner.

Sec. 2164. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner, to any creditor of the firm who has been actually misled thereby to his prejudice.

Sec. 2165. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by Article I., of this Chapter.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

Section 2170. When special partnership becomes general.
" 2171. How new special partners may be admitted.

Section 2172. Dissolution of special partnerships. Notice.
" *2173. When special partner liable as general partner.*

Sec. 2170. A special partnership becomes general, if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk, with whom the original certificate of the partnership was filed and recorded, and notice thereof published, as provided in Article I., of this Chapter, for the publication of the certificate.

Sec. 2171. New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them and by the general partners, verified, acknowledged, or proved, according to the provisions of Article I., of this Chapter, and filed and recorded with the county clerk, with whom the original certificate of the partnership was filed.

Sec. 2172. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county clerk, with whom the original certificate was recorded, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

Sec. 2173. The business of the partnership shall be conducted under a firm name, in which names of the general partners only shall be inserted. If the name of any special partner shall be used in such firm name with his consent, or if he shall personally make any contract respecting or concerning the partnership with any person except the general partner, he becomes liable as a general partner.

CHAPTER IV.

MINING PARTNERSHIPS.

Section 2178. When a mining partnership exists.
" *2179. Express agreement not necessary to constitute.*
" *2180. Profits and losses, how shared.*
" *2181. Lien of partners.*
" *2182. Mine—Partnership property.*
" *2183. Partnership not dissolved by sale of interest.*
" *2184. Purchaser takes, subject to liens, unless, etc.*
" *2185. Takes with notice of lien, when.*
" *2186. Contract in writing, when binding.*
" *2187. Owners of majority of shares govern.*

Sec. 2178. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom, actually engage in working the same.

Sec. 2179. An express agreement to become partners or to share the profits and losses of mining, is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

Sec. 2180. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

Sec. 2181. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its use. This lien exists, notwithstanding there is an agreement among the partners that it must not.

Sec. 2182. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

Sec. 2183. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

Sec. 2184. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

Sec. 2185. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other, and to the creditors of the partnership.

Sec. 2186. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

Sec. 2187. The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

TITLE XI.

INSURANCE.

Chapter *I. Insurance in general.*
" *II. Fire insurance.*
" *III. Life and health insurance.*

CHAPTER I.

INSURANCE IN GENERAL.

Article I. Definition of insurance.
" II. What may be insured.
" III. Parties.
" IV. Insurable interest.
" V. Concealment and representation.
" VI. The policy.
" VII. Warranties.
" VIII. Premiums.
" IX. Loss.
" X. Notice of loss.
" XI. Double insurance.
" XII. Reinsurance.

ARTICLE I.

DEFINITION OF INSURANCE.

Sec. 2190. Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

ARTICLE II.

WHAT MAY BE INSURED.

Section 2193. What events may be insured against.
" 2194. Insurance of lottery or lottery prize unauthorized.
" 2195. Usual kinds of insurance.
" 2196. All subject to this Chapter.

Sec. 2193. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this Chapter.

Sec. 2194. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

Sec. 2195. The usual kinds of insurance are :

1. Marine insurance.
2. Fire insurance.
3. Life insurance.
4. Health insurance ; and,
5. Accident insurance.

Sec. 2196. All kinds of insurance are subject to the provisions of this Chapter.

ARTICLE III.

PARTIES TO THE CONTRACT.

Section 2201. Designation of parties.
" 2202. Who may insure.
" 2203. Who may be insured.
" 2204. Assignment to mortgagee of thing insured.
" 2205. New contract between insurer and assignee.

Sec. 2201. The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the persòn indemnified is called the insured.

Sec. 2202. Any one capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents, and others.

Sec. 2203. Any one except a public enemy may be insured.

Sec. 2204. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

Sec. 2205. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.

INSURABLE INTEREST.

Section 2210. Insurable interest, what.
" 2211. In what may consist.
" 2212. Interest of carrier or depositary.
" 2213. Mere expectancies.
" 2214. Measure of interest in property.
" 2215. Insurance without interest, illegal.
" 2216. When interest must exist.
" 2217. Effect of transfer.
" 2218. Transfer after loss.
" 2219. Exception in the case of several subjects in one policy.
" 2220. In case of the death of the insurer.
" 2221. In the case of transfer between co-tenants.
" 2222. Policy, when void.

Sec. 2210. Any interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest.

Sec. 2211. An insurable interest in property may consist in:

1. An existing interest.

2. An inchoate interest founded on an existing interest; or,

3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

Sec. 2212. A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

Sec. 2213. A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

Sec. 2214. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

Sec. 2215. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest, the contract is void.

Sec. 2216. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

Sec. 2217. Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

Sec. 2218. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

Sec. 2219. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

Sec. 2220. A change of interest, by will or succession, or the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

Sec. 2221. A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

Sec. 2222. Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming, or wagering, is void.

ARTICLE V.

CONCEALMENT AND REPRESENTATIONS.

Section 2227. Concealment, what.
" *2228. Effect of concealment.*
" *2229. What must be disclosed.*
" *2230. Matters which need not be communicated without inquiry.*
" *2231. Test of materiality.*
" *2232. Matters which each is bound to know.*
" *2233. Waiver of communication.*
" *2234. Interest of insured.*
" *2235. Fraudulent warranty.*
" *2236. Matters of opinion.*
" *2237. Representation, what.*
" *2238. When made.*
" *2239. How interpreted.*
" *2240. Representation as to future.*
" *2241. How may affect policy.*
" *2242. When may be withdrawn.*
" *2243. Time intended by representation.*
" *2244. Representing information.*
" *2245. Falsity.*
" *2246. Effect of falsity.*
" *2247. Materiality.*
" *2248. Application of provisions of this Article.*

Sec. 2227. A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

Sec. 2228. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

Sec. 2229. Each party to a contract of insurance must communicate to the other, in good faith, all the facts within his knowledge which are or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

Sec. 2230. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows:

2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant.

3. Those of which the other waives communication.

4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,

5. Those which relate to a risk, excepted from the policy, and which are not otherwise material.

Sec. 2231. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

Sec. 2232. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated, and all general usages of trade.

Sec. 2233. The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

Sec. 2234. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by Section 2264.

Sec. 2235. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

Sec. 2236. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

Sec. 2237. A representation may be oral or written.

Sec. 2238. A representation may be made at the same time with issuing the policy, or before it.

Sec. 2239. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

Sec. 2240. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

Sec. 2241. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

Sec. 2242. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

Sec. 2243. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

Sec. 2244. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the intelligence.

Sec. 2245. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

Sec. 2246. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract, from the time when the representation becomes false.

Sec. 2247. The materiality of a representation is determined by the same rule as the materiality of a concealment.

Sec. 2248. The provisions of this Article apply as well to a modification of a contract of insurance as to its original formation.

ARTICLE VI.

THE POLICY.

Section 2253. Policy, what.
" *2254. What must be specified in a policy.*
" *2255. Whose interest is covered.*
" *2256. Insurance by agent or trustee.*
" *2257. Insurance by part owner.*
" *2258. General terms.*
" *2259. Successive owners.*
" *2260. Transfer of the thing insured.*
" *2261. Open and valued policies.*
" *2262. Open policy, what.*
" *2263. Valued policy, what.*
" *2264. Running policy, what.*
" *2265. Effect of receipt.*
" *2266. Agreement not to transfer.*

Sec. 2253. The written instrument in which a contract of insurance is set forth, is called a policy of insurance.

Sec. 2254. A policy of insurance must specify:

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property of life insured.
4. The interest of the insured in the property insured, if he is not the absolute owner thereof.
5. The risks insured against; and,
6. The period during which the insurance is to continue.

Sec. 2255. When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

Sec. 2256. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

Sec. 2257. To render an insurance, effected by one partner or part owner, applicable to the interest of his co-partners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

Sec. 2258. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

Sec. 2259. A policy may be so framed that it will enure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

Sec. 2260. The mere transfer of a thing insured does not transfer the policy, but suspends it till the same person becomes the owner of both the policy and the thing insured.

Sec. 2261. A policy is either open or valued.

Sec. 2262. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

Sec. 2263. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Sec. 2264. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

Sec. 2265. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Sec. 2266. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

ARTICLE VII.

WARRANTIES.

Section 2271. Warranty, express or implied.
" *2272. Form.*
" *2273. Warranty, in what contained.*
" *2274. Past, present and future warranties.*
" *2275. Warranty, as to past or present.*
" *2276. Warranty as to the future.*
" *2277. Performance excused.*
" *2278. What acts avoid the policy.*
" *2279. Policy may provide for avoidance.*
" *2280. Breach without fraud.*

Sec. 2271. A warranty is either express or implied.

Sec. 2272. No particular form of words is necessary to create a warranty.

Sec. 2273. Every express warranty, made at or before the execution of the policy, must be contained in the policy itself, or in another instrument signed by the insured, and referred to in the policy, as making a part of it.

Sec. 2274. A warranty may relate to the past, the present, the future, or to any or all of these.

Sec. 2275. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

Sec. 2276. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

Sec. 2277. When before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

Sec. 2278. The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

Sec. 2279. A policy may declare that a violation of specified provisions shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy.

Sec. 2280. A breach of warranty, without fraud, merely exonerates the insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk.

ARTICLE VIII.

PREMIUM.

Section 2285. When premium is earned.
" *2286. Return of premium.*
" *2287. When none allowed.*
" *2288. Return for fraud.*
" *2289. Over-insurance by several insurers.*
" *2290. Contribution.*
" *2291. Proportionate contribution.*

Sec. 2285. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

Sec. 2286. A person insured is entitled to a return of premium, as follows:

1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.

2. Where the insurance is made for a definite period of time and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

Sec. 2287. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.

Sec. 2288. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

Sec. 2289. In case of an over-insurance by several insurers, the insurer is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

Sec. 2290. When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned, in proportion to the amount insured by their respective policies.

Sec. 2291. When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

ARTICLE IX.

LOSS.

Section 2296. Perils, remote and proximate.
" *2297. Loss incurred in rescue from peril.*
" *2298. Excepted perils.*
" *2299. Negligence and fraud.*

Sec. 2296. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

Sec. 2297. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

Sec. 2298. Where a peril is specially excepted in a contract of insurance, a loss which would not have occurred but for such peril, is thereby excepted;. although the immediate cause of the loss was a peril which was not excepted.

Sec. 2299. An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

ARTICLE X.

NOTICE OF LOSS.

Section 2304. Notice of loss.
" *2305. Preliminary proofs.*
" *2306. Waivers of defects in notice, etc.*
" *2307. Waiver of delay.*
" *2308. Certificate, when dispensed with.*

Sec. 2304. In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

Sec. 2305. When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

Sec. 2306. All defects in a notice of loss, or in preliminary proofs thereof which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

Sec. 2307. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

Sec. 2308. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

ARTICLE XI.

DOUBLE INSURANCE.

Section 2313. Double insurance.
" *2314. Contribution in case of double insurance.*

Sec. 2313. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

Sec. 2314. In case of double insurance, the several insurers are liable to pay losses thereon as follows:

1. In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies.

2. In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies; no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably.

ARTICLE XII.

REINSURANCE.

Section 2319. Reinsurance, what.
" *2320. Disclosures required.*
" *2321. Reinsurance presumed to be against liability.*
" *2322. Original insured has no interest.*

Sec. 2319. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

Sec. 2320. Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

Sec. 2321. A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

Sec. 2322. The original insured has no interest in a contract of reinsurance.

CHAPTER II.

MARINE INSURANCE.

Section 2326. Defintion of marine insurance.

Sec. 2326. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

CHAPTER III.

FIRE INSURANCE.

Section 2330. Alteration increasing risk.
" *2331. Alteration not increasing risk.*

Section 2332. Acts of the insured.
" *2333. Measure of the indemnity.*

Sec. 2330. An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Sec. 2331. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Sec. 2332. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss.

Sec. 2333. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured, in the condition in which it was at the time of the injury; but a valuation, fraudulent in fact, entitles the insurer to rescind the contract.

CHAPTER IV.

LIFE, HEALTH AND ACCIDENT INSURANCE.

Section 2338. Insurance upon life, when payable.
" *2339. Insurable interest.*
" *2340. Assignee, etc., of life policy need have no interest.*
" *2341. Notice of transfer.*
" *2342. Measure of indemnity.*

Sec. 2338. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

Sec. 2339. Every person has an insurable interest in the life, health and freedom from accidents:

1. Of himself.

2. Of any person on whom he depends wholly or in part for education or support.

3. Of any person under a legal obligation to him for the payment of money, or respecting property or services of which death, illness or injury caused by accident might delay or prevent the performance; and,

4. Of any person upon whose life any estate or interest vested in him depends.

Sec. 2340. A policy of insurance upon life, health or freedom from accident may pass by transfer, will, or succession to any person, whether he has an insurable interest or not, nd such person may recover upon it whatever the insured ight have recovered.

Sec. 2341. Notice to an insurer of a transfer or bequest hereof is not necessary to preserve the validity of a policy of surance, upon life, health or freedom from accident, unless hereby expressly required.

Sec. 2342. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of demnity under a policy of insurance upon life, health or reedom from accident is the sum fixed in the policy.

TITLE XII.

INDEMNITY.

Section 2347. Indemnity, what.
" *2348. Indemnity for a future wrongful act void.*
" *2349. Indemnity for a past wrongful act valid.*
" *2350. Indemnity extends to acts of agents.*
" *2351. Indemnity to several.*
" *2352. Persons indemnifying liable jointly or severally with person indemnified.*
" *2353. Rules for interpreting agreement of indemnity.*
" *2354. When person indemnifying is a surety.*

Sec. 2347. Indemnity is a contract by which one engages o save another from a legal consequence of the conduct of e of the parties, or of some other person.

Sec. 2348. An agreement to indemnify a person against an ct thereafter to be done is void, if the act be known by such erson, at the time of doing it, to be unlawful.

Sec. 2349. An agreement to indemnify a person against an ct already done is valid, even though the act was known to e wrongful, unless it was a felony.

Sec. 2350. An agreement to indemnify against the acts of certain person applies not only to his acts and their consequences, but also to those of his agents.

Sec. 2351. An agreement to indemnify several persons apies to each, unless a contrary intention appears.

Sec. 2352. One who indemnifies another against an act to e done by the latter, is liable jointly with the person indemified, and separately to every person injured by such act.

Sec. 2353. In the interpretation of a contract of indemnity, e following rules are to be applied, unless a contrary intenion appears:

1. Upon an indemnity against liability, expressly, or in other quivalent terms, the person indemnified is entitled to recover pon becoming liable.

2. Upon an indemnity against claims, or demands, or damges, or costs, expressly, or in other equivalent terms, the

person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defence against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion.

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defences, if he chooses to do so.

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defence, judgment against the latter is only presumptive evidence against the former.

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defence upon the merits, which by want of ordinary care he failed to establish in the action.

Sec. 2354. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay.

TITLE XIII.

GUARANTY.

Chapter I. Guaranty in general.
" II. Suretyship.

CHAPTER I.

GUARANTY IN GENERAL.

Article I. Definition of guaranty.
" II. Creation of guaranty.
" III. Interpretation of guaranty.
" IV. Liability of guarantors.
" V. Continuing guaranty.
" VI. Exoneration of guarantors.

ARTICLE I.

DEFINITION OF GUARANTY.

Section 2359. Guaranty, what.
" 2360. Knowledge of principal not necessary to creation of guaranty.

Sec. 2359. A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

Sec. 2360. A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.

CREATION OF GUARANTY.

Section 2365. Necessity of a consideration.
" *2366. Guaranty to be in writing, etc.*
" *2367. Engagement to answer for obligation of another, when deemed original.*
" *2368. Acceptance of guaranty.*

Sec. 2365. Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Sec. 2366. Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

Sec. 2367. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation, in whole or in part, in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety.

3. Where the promise being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor, or upon the consideration that the party receiving it releases the property of another from a levy, or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale.

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or

for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Sec. 2368. A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor ; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.

INTERPRETATION OF GUARANTY.

Section 2373. Guaranty of incomplete contract.
" *2374. Guaranty that an obligation is good or collectible.*
" *2375. Recovery upon such guaranty.*
" *2376. Guarantor's liability upon such guaranty.*

Sec. 2373. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

Sec. 2374. A guaranty to the effect that an obligation is good or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

Sec. 2375. A guaranty, such as is mentioned in the last section, is not discharged by an omission, to take proceedings upon the principal debt, or upon any collateral security for its payment if no part of the debt could have been collected thereby.

Sec. 2376. In the case mentioned in Section 2374, the removal of the principal from the State, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.

LIABILITY OF GUARANTORS.

Section 2381. Guaranty, how construed.
" *2382. Liability upon guaranty of payment or performance.*
" *2383. Liability upon guaranty of a conditional obligation.*
" *2384. Obligation of guarantor cannot exceed that of the principal.*
" *2385. Guarantor not liable on an illegal contract.*

Sec. 2381. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

Sec. 2382. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

Sec. 2383. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

Sec. 2384. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms, it exceeds it, it is reducible in proportion to the principal obligation.

Sec. 2385. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.

CONTINUING GUARANTY.

Section 2390. Continuing guaranty, what.
" 2391. Revocation.

Sec. 2390. A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

Sec. 2391. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.

EXONERATION OF GUARANTORS.

Section 2396. What dealings with debtor exonerates guarantor.
" 2397. Void promises.
" 2398. Rescission of alteration.
" 2399. Part performance.
" 2400. Delay of creditor does not discharge guarantor.
" 2401. Guarantor indemnified by the debtor, not exonerated.
" 2402. Discharge of principal by act of law does not discharge guarantor.

Sec. 2396. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

Sec. 2397. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation, or suspend or impair the remedy, within the meaning of the last section.

Sec. 2398. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

Sec. 2399. The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

Sec. 2400. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

Sec. 2401. A guarantor who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Sec. 2402. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER II.

SURETYSHIP.

Article I. Who are sureties.
" *II. Liability of sureties.*
" *III. Rights of sureties.*
" *IV. Rights of credtiors.*
" *V. Letter of credit.*

ARTICLE I.

WHO ARE SURETIES.

Section 2407. Surety, what.
" *2408. Apparent principal may show that he is surety.*

Sec. 2407. A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

Sec. 2408. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

ARTICLE II.

LIABILITY OF SURETIES.

Section 2413. Limit of surety's obligation.
" *2414. Rules of interpretation.*
" *2415. Judgment against surety does not alter the relation.*
" *2416. Surety exonerated by performance or offer of performance.*
" *2417. Surety discharged by certain acts of the creditor.*

Sec. 2413. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

Sec. 2414. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

Sec. 2415. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

Sec. 2416. Performance of the principal obligation, or an offer of such performance, duly made as provided in this Code, exonerates a surety.

Sec. 2417. A surety is exonerated:

1. In like manner with a guarantor.
2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,
3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

ARTICLE III.

RIGHTS OF SURETIES.

Section 2422. Surety has rights of guarantor.
" *2423. Surety may require the creditor to proceed against the principal.*
" *2424. Surety may compel principal to perform obligations, when due.*
" *2425. A principal bound to reimburse his surety.*
" *2426. The surety acquires the right of the creditor.*

Section 2427. Surety entitled to benefit of securities held by creditor.
" 2428. The property of principal to be taken first.

Sec. 2422. A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

Sec. 2423. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

Sec. 2424. A surety may compel his principal to perform the obligations when due.

Sec. 2425. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

Sec. 2426. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

Sec. 2427. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a co-surety at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

Sec. 2428. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE IV.

RIGHTS OF CREDITORS.

Sec. 2433. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

ARTICLE V.

LETTER OF CREDIT.

Section 2438. Letter of credit, what.
" 2439. How addressed.

Section 2440. Liability of the writer.
" *2441. Letters of credit, either general or special.*
" *2442. Nature of general letter of credit.*
" *2443. Extent of general letter of credit.*
" *2444. A letter of credit may be a continuing guaranty.*
" *2445. When notice to the writer necessary.*
" *2446. The credit given must agree with the terms of the letter.*

Sec. 2438. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

Sec. 2439. A letter of credit may be addressed to several persons in succession.

Sec. 2440. The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

Sec. 2441. A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

Sec. 2442. A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes as to him of the same effect as if addressed to him by name.

Sec. 2443. Several persons may successively give credit upon a general letter.

Sec. 2444. If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealings between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

Sec. 2445. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

Sec. 2446. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the terms of credit, or limits the amount thereof, the writer is not bound, except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

LIEN.

Chapter I. Liens in general.
" *II. Mortgage.*
" *III. Pledge.*
" *IV. Other liens.*
" *V. Stoppage in transit.*

CHAPTER I.

LIENS IN GENERAL.

Article I. Definition of liens.
" II. Creation of liens.
" III. Effect of liens.
" IV. Priority of liens.
" V. Redemption from liens.
" VI. Extinction of liens.

ARTICLE I.

DEFINITION OF LIENS.

Section 2451. Lien, what.
" 2452. Liens, general or special.
" 2453. General lien, what.
" 2454. Special lien, what.
" 2455. Prior liens.
" 2456. Contracts subject to provisions of this Chapter.

Sec. 2451. A lien is a charge imposed in some mode other than by a transfer in trust upon specific property, by which it is made security for the performance of an act.

Sec. 2452. Liens are either general or specific.

Sec. 2453. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor, against the owner of the property.

Sec. 2454. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

Sec. 2455. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

Sec. 2456. Contracts of mortgage, or pledge, are subject to all the provisions of this Chapter.

ARTICLE II.

CREATION OF LIENS.

Section 2461. Lien, how created.
" 2462. No lien for claim not due.
" 2463. Lien on future interest.
" 2464. Lien may be created by contract.

Sec. 2461. A lien is created :

1. By contract of the parties ; or,
2. By operation of law.

Sec. 2462. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

Sec. 2463. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

Sec. 2464. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

ARTICLE III.

EFFECT OF LIENS.

Section 2469. Lien, or contract for lien, transfers no title.
" *2470. Certain contracts void.*
" *2471. Creation of lien does not imply personal obligation.*
" *2472. Extent of lien.*
" *2473. Creditor may enforce obligation.*
" *2474. Holder of lien not entitled to compensation.*

Sec. 2469. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

Sec. 2470. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

Sec. 2471. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

Sec. 2472. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

Sec. 2473. The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien.

Sec. 2474. One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof, for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under Sections 1663 and 1664.

ARTICLE IV.

PRIORITY OF LIENS.

Section 2479. Priority of liens.
" *2480. Priority of mortgage for price.*
" *2481. Order of resort to different funds.*

Sec. 2479. Other things being equal, different liens upon the same property have priority according to the time of their creation.

Sec. 2480. Except as otherwise provided by law, a mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

Sec. 2481. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order on the demand of any party interested:

1. To the things upon which he has an exclusive lien.
2. To the things which are subject to the fewest subordinate liens.
3. In like manner inversely to the number of subordinate liens upon the same thing; and,
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:

First—To the things which have not been transferred since the prior lien was created.

Second—To the things which have been so transferred without a valuable consideration; and,

Third—To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

ARTICLE V.

REDEMPTION FROM LIEN.

Section 2486. Right to redeem.
" *2487. Rights of inferior lienor.*
" *2488. Redemption from lien, how made.*

Sec. 2486. Every person having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Sec. 2487. One who has a lien, inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

Sec. 2488. Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.

EXTINCTION OF LIENS.

Section 2493. Lien deemed accessory to the act whose performance it secures.
" *2494. Extinction by sale or conversion.*
" *2495. Lien extinguished by lapse of time under Statute of Limitations.*
" *2496. Apportionment of lien.*
" *2497. When restoration extinguishes lien.*

Sec. 2493. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

Sec. 2494. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

Sec. 2495. A lien is extinguished by the lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

Sec. 2496. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

Sec. 2497. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration.

CHAPTER II.

MORTGAGE.

Article I. Mortgages in general.
" *II. Mortgages of real property.*
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ARTICLE I.

MORTGAGES IN GENERAL.

Section 2501. Mortgage, what.
" *2502. Property adversely held may be mortgaged.*
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" *2504. Transfer of interest, when deemed a mortgage.*
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" *2514. Recording assignment of mortgage.*
" *2515. Recording assignment of mortgage not notice to mortgagor.*
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Sec. 2501. Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

Sec. 2502. A mortgage may be created upon property held adversely to the mortgagor.

Sec. 2503. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

Sec. 2504. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

Sec. 2505. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice) though the fact does not appear by the terms of the instrument.

Sec. 2506. A mortgage is a lien upon everything that would pass by a grant of the property.

Sec. 2507. A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

Sec. 2508. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

Sec. 2509. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

Sec. 2510. Title acquired by the mortgagor subsequent to the execution of the mortgage enures to the mortgagee as security for the debt, in like manner as if acquired before the execution.

Sec. 2511. A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the Code of Civil Procedure.

Sec. 2512. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

Sec. 2513. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

Sec. 2514. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Sec. 2515. When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond or other instrument.

Sec. 2516. The assignment of a debt secured by mortgage carries with it the security.

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

Section 2525. What real property may be mortgaged.
" 2526. Form of mortgage.
" 2527. Mortgage renewed or extended by writing.
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" 2529. May be recorded.
" 2530. Satisfaction of mortgage.
" 2531. Same.
" 2532. Record of satisfaction.
" 2533. Penalty for refusal to execute satisfaction.
" 2534. Mortgages by corporation.

Sec. 2525. Any interest in real property which is capable of being transferred may be mortgaged.

Sec. 2526. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the —— day of ——, in the year ——, by A. B., of ——, mortgagor, to C. D., of ——, mortgagee, witnesseth:

"That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of —— dollars, on (or before) the —— day of ——, in the year

——, with interest thereon (or as security for the payment of an obligation, describing it, etc.) A. B."

Sec. 2527. A mortgage of real property can be created, renewed or extended, only by writing, with the formalities required in the case of a grant of real property.

Sec. 2528. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

Sec. 2529. Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effects as grants thereof.

Sec. 2530. Any mortgage that has been or may be hereafter recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the county clerk, or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Sec. 2531. Any mortgage shall also be discharged upon the record thereof, by the county clerk in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or proved and certified, as in this Code prescribed, to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

Sec. 2532. Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage made by the county clerk upon the margin of the record thereof.

Sec. 2533. Any mortgagee, or his personal representative, or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall, for the space of seven days after being requested, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

Sec. 2534. All mortgages, deeds of trust, or assignments for the benefit of creditors of both real and personal property, executed by a corporation, are governed by the law relating to mortgages or deeds of trust of real property, and must be recorded in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, but any mortgage, deed of trust, or assignment for the benefit of creditors must be accompanied by the affidavit specified in Section 2541, of this Code, and which said affidavit may be made on behalf of any such company or corporation by the president, secretary or managing agent thereof.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

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" *2542. Mortgage by partnership.*
" *2543. Acknowledgment.*
" *2544. Filing of mortgage and duty of recorder.*
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" *2548. Rights of subsequent mortgage.*
" *2549. Mode of attachment of mortgaged chattels.*
" *2550. Certified copy in case of loss of original.*
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" *2553. Possession of range stock.*
" *2554. Satisfaction of mortgage.*
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Sec. 2540. Any interest in personal property which is capable of being transferred, may be mortgaged.

Sec. 2541. A mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith for value, unless:

1. The possession of such property be delivered to and retained by the mortgagee; or,

2. The mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or in case any party is absent from the city or township where such mortgage is executed, at the time of the execution thereof, an affidavit of those present and of the agent or attorney in fact of such absent party, that the same is made in good faith, to secure the amount named therein, and without any design to hinder, delay, or defraud creditors, and be acknowledged and filed as hereinafter provided.

Sec. 2542. Subject to the provisions of the next preceding section, one member of a firm of general partners may alone execute a mortgage of personal property and make the affidavit therein required on behalf of the firm, and the mortgage so executed and the affidavit so made, is as valid as if executed and made by all the partners, or their agent, or attorney in fact. In case of a corporation the president, secretary or managing agent thereof may make the affidavit on its behalf.

Sec. 2543. Every mortgage of personal property shall be acknowledged by the mortgagor or person executing the same, in the manner provided for the acknowledgment of conveyances of real property, before some officer authorized by law to take acknowledgments of deeds. The form of such mortgage may be substantially the same as prescribed in Section 2526, of this Code.

Sec. 2544. Every mortgage of personal property, together with the affidavit of the parties thereto, or a copy thereof, certified to be correct by the county clerk, or person before whom the acknowledgment has been made, must be filed in the office of the county clerk of the county where the mortgagor resides, or, in case he is not a resident of this State, then in the office of the county clerk of the county where the property is at the time of the execution of the mortgage; and the county clerk must, on receipt of such mortgage or copy, indorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book properly ruled and kept for that purpose, the names of all the parties, the names of the mortgagors to be alphabetically arranged, the consideration thereof, the date of its maturity, and the time of filing the same.

Sec. 2545. Every mortgage of personal property, made, acknowledged and filed, as provided by the laws of this State, is thereupon, if made in good faith, good and valid as against the creditors of the mortgagor or subsequent purchasers, or incumbrancers, from the time it is so filed, until the maturity of the entire debt or obligation secured thereby and for the period of sixty days thereafter. The entire period of time such mortgage is valid and binding against the creditors of the mortgagor and subsequent purchasers and incumbrancers must not exceed one year and sixty days, except by a compliance with the provisions of the next section.

Sec. 2546. Every mortgage of personal property, made, acknowledged and filed as provided by the laws of this State, may be renewed at or before the maturity of the debt or obligation secured thereby, in case such debt or obligation or any part thereof be unpaid or unfulfilled, by filing an affidavit showing the date of such mortgage, the name of the mortgagor and mortgagee, the date of filing the same, the amount of the debt or obligation secured thereby, and the amount of the debt justly owing at the time of filing such affidavit or the conditions of the obligation unfulfilled, the time to which the same is extended, which time must not exeed one year, and that such debt or obligation was neither made nor renewed to hinder, delay or defraud the creditors or subsequent incumbrancers of the mortgagor, which affidavit must be subscribed and sworn to by the mortgagee, before an officer authorized to administer oaths, and filed in the office where such mortgage therein described is filed, and thereupon the county clerk of such county, must attach such affidavit to the mortgage therein described and note the date of filing thereof opposite the entry of the mortgage therein described, in the book provided by law for the entry of chattel mortgages, and thereby such mortgage is renewed and continues and is valid and of full force and effect upon the personal property described therein, for the time stated in such affidavit, not to exceed one year.

Sec. 2547. The filing of the affidavit provided in the next preceding section shall not be construed to extend the time of maturity of any debt, or the execution of an obligation secured by such mortgage, but the same may be enforced according to the conditions thereof, and such mortgage foreclosed according to law, at any time within the period for which such mortgage is so renewed, unless agreement be made between the mortgagee and mortgagor extending the time of payment of such debt or fulfillment of such obligation to the time stated in such affidavit.

Sec. 2548. Any subsequent mortgage of personal property, upon which a prior mortgage exists, which has been extended or renewed, as provided in Section 2546, of this Article, may, at any time during the existence of such mortgage, pay the amount of the debt and interest owing and secured thereby, as shown by such affidavit and mortgage, or deposit the full amount thereof with the county clerk of the county wherein such affidavit and mortgage are filed, subject to the order of the mortgagee, his legal representatives or assigns, and the receipt or duplicate receipt for such payment or deposit; shall be filed in said office and attached to such mortgage, and thereby such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage.

Sec. 2549. Personal property mortgaged may be taken on attachment or execution issued at the suit of a creditor of the mortgagor; but before the property is so taken, the officer must pay or tender to the mortgagee, the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer of the county in which the mortgage is filed, payable to the order of the mortgagee; and when the property then taken is sold, under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

Sec. 2550. A copy of any mortgage of personal property, made, acknowledged, and filed as provided in this Article, certified by the county clerk in whose office the same shall be filed, may be read in evidence in any court of this State, without further proof of the execution of the original, if said original be lost, or out of the power of the person wishing to to use it.

Sec. 2551. The provisions of the foregoing sections of this Article shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have the effect of a mortgage or lien upon such property.

Sec. 2552. An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages and liens upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged; but it is lawful for the mortgagor of personal property to insert in his mortgage a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, to execute the power of sale therein granted to the mortgagee, his legal representative and assigns, in which case the sheriff of such county, at the time of default, at the request of the mortgagee, must and it is hereby made his duty to advertise and sell the whole or any part of the mortgaged property, wherever it may be, in the manner provided in such mortgage; and at such sale, made as aforesaid, the mortgagee, or his representative or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff may require an indemnity bond from the mortgagee or his assigns before taking possession of, or selling the mortgaged property.

Sec. 2553. The Code of Civil Procedure provides the method of taking possession of range stock under mortgage, between the first day of November and the next succeeding fifteenth day of May.

Sec. 2554. Whenever the debt or obligation secured by any mortgage of personal property, which has been filed in the office of the county clerk, as provided in this Article, shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assigns, must be indorsed upon the mortgage, or copy thereof, filed as aforesaid, and the fact of such discharge or satisfaction noted by the county clerk in the book kept by him, as provided in Section 2544, of this Article, opposite the names of the parties to such mortgage.

Sec. 2555. Any person having conveyed any goods, chattels or personal property to another by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said property or any part thereof, to a third person for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser, twice the value of such property so sold, which forfeiture may be recovered in an action of debt, in any court having jurisdiction thereof.

Sec. 2556. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor.

CHAPTER III.

PLEDGE.

Section 2562. Pledge, what.
" *2563. When contract is to be deemed a pledge.*
" *2564. Delivery essential to validity of pledge.*
" *2565. Increase of thing.*
" *2566. Lienor may pledge property to extent of his lien.*
" *2567. Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge.*
" *2568. Pledge lender, what.*
" *2569. Pledge holder, what.*
" *2570. When pledge lender may withdraw property pledged.*
" *2571. Obligations of pledge holder.*
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" *2578. Notice of sale to pledgor.*
" *2579. Waiver of notice of sale.*
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" *2581. Sale must be by auction.*
" *2582. Pledgee's sale of securities.*
" *2583. Sale on demand of the pledgor.*
" *2584. Surplus to be paid to pledgor.*
" *2585. Same.*
" *2586. Pledgee's purchase of property pledged.*
" *2587. Pledgee may foreclose right of redemption.*

Sec. 2562. Pledge is a deposit of personal property by way of security for the performance of another act.

Sec. 2563. Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

Sec. 2564. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereafter prescribed.

Sec. 2565. The increase of property pledged is pledged with the property.

Sec. 2566. One who has a lien upon property may pledge it to the extent of his lien.

Sec. 2567. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title to defeat a pledge of the property, made by the other to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

Sec. 2568. Property may be pledged as security for the obligation of another person than the owner, and in so doing, the owner has all the rights of a pledgor for himself, except as hereinafter stated.

Sec. 2569. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

Sec. 2570. One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

Sec. 2571. A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

Sec. 2572. A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Sec. 2573. A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward.

Sec. 2574. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

Sec. 2575. Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof, may recover his debt immediately, though it be not actually due.

Sec. 2576. When performance of the act for which a pledge is given, is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

Sec. 2577. Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

Sec. 2578. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

Sec. 2579. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

Sec. 2580. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but cannot waive it in any other manner except by contract.

Sec. 2581. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

Sec. 2582. A pledgee cannot sell any evidence of debt, pledged to him, except the obligations of governments, States, or corporations; but he may collect the same when due.

Sec. 2583. Whenever property pledged can be sold for a price sufficient to satisfy the claims of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

Sec. 2584. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor on demand.

Sec. 2585. When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

Sec. 2586. A pledgee, or pledge holder, cannot purchase the property pledged, except by direct dealing with the pledgor.

Sec. 2587. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER IV.

OTHER LIENS.

Section 2595. Lien of seller of real property.
" *2596. When transfer of contract waives lien.*
" *2597. Extent of seller's lien.*
" *2598. Lien of seller of personal property.*
" *2599. Purchaser's lien on real property.*
" *2600. Lien for service.*
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" *2604. Seamen's lien.*
" *2605. Officer's lien.*
" *2606. Judgment lien.*
" *2607. Mechanic's lien.*

Sec. 2595. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured, otherwise than by the personal obligation of the buyer.

Sec. 2596. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

Sec. 2597. The liens defined in Sections 2595 and 2599 are valid against every one claiming under the debtor, except a purchaser and incumbrancer in good faith and for value.

Sec. 2598. One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

Sec. 2599. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

Sec. 2600. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the making, repairing, protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. A ranchman, farmer, agister, herder, hotel keeper, livery, boarding or feed stable keeper, to whom any horses, mules, cattle, sheep, hogs or other stock are intrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing or ranching the same, and is authorized to retain possession thereof until the sum due is paid, and may enforce his lien as in the case of a pledge.

Sec. 2601. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

Sec. 2602. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

Sec. 2603. The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

Sec. 2604. The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage, for their wages, which is superior to every other lien.

Sec. 2605. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

Sec. 2606. The lien of a judgment is regulated by the Code of Civil Procedure.

Sec. 2607. The liens of mechanics and others for materials and services are regulated further by the Code of Civil Procedure.

CHAPTER V.

STOPPAGE IN TRANSIT.

Section 2612. When consignor may stop goods.
" *2613. What is insolvency of consignee.*
" *2614. Transit, when ended.*
" *2615. Stoppage, how effected.*
" *2616. Effect of stoppage.*

Sec. 2612. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

Sec. 2613. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

Sec. 2614. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

Sec. 2615. Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

Sec. 2616. Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

Chapter I. Negotiable instruments in general.
" *II. Bills of exchange.*
" *III. Promissory notes.*
" *IV. Checks.*

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

Article I. General definitions.
" *II. Interpretation.*
" *III. Indorsement.*
" *IV. Presentment for payment.*
" *V. Dishonor.*
" *VI. Excuse of presentment and notice.*
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ARTICLE I.

GENERAL DEFINITIONS.

Section 2621. To what instruments this Title is applicable.
" *2622. Negotiable instrument, what.*
" *2623. Must be for unconditional payment of money.*
" *2624. Payee.*
" *2625. Instrument may be in alternative.*
" *2626. Date, etc.*
" *2627. May contain a pledge, etc.*
" *2628. What it must not contain.*
" *2629. Date.*
" *2630. Different classes of negotiable instruments.*

Sec. 2621. The provisions of this Title apply only to negotiable instruments, as defined in this Article.

Sec. 2622. A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this Article.

Sec. 2623. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

Sec. 2624. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

Sec. 2625. A negotiable instrument must give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provision of this Title.

Sec. 2626. A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

Sec. 2627. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

Sec. 2628. A negotiable instrument must not contain any other contract than such as is specified in this Article.

Sec. 2629. Any date may be inserted by the maker of a negotiable instrument, whether past, present or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

Sec. 2630. There are six classes of negotiable instruments, namely:

1. Bills of exchange.
2. Promissory notes.
3. Bank notes.
4. Checks.
5. Bonds.
6. Certificates of deposit.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

Section 2635. Time and place of payment.
" *2636. Place of payment not specified.*
" *2637. Instruments payable to a person or his order, how construed.*
" *2638. Unindorsed note, when negotiable.*
" *2639. Fictitious payee.*
" *2640. Presumption of consideration.*

Sec. 2635. A negotiable instrument which does not specify the time of payment is payable immediately.

Sec. 2636. A negotiable instrument which does not specify a place of payment, is payable wherever it is held at its maturity.

Sec. 3637. An instrument, otherwise negotiable in form, payable to a person named, but with the words added, "or to his order," or "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer.

Sec. 2638. A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts as if payable to the bearer.

Sec. 2639. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

Sec. 2640. The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

ARTICLE III.

INDORSEMENT.

Section 2645. Indorsement, what.
“ *2646. Agreement to indorse.*
“ *2647. When may be made on separate paper.*
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“ *2649. General indorsement, what.*
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“ *2652. Destruction of negotiability by indorser.*
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“ *2654. Indorser, when liable to payee.*
“ *2655. Indorsement without recourse.*
“ *2656. Same.*
“ *2657. Indorsee privy to contract.*
“ *2658. Effect of want of consideration.*
“ *2659. Indorsee in due course, what.*
“ *2660. Rights of indorsee in due course.*
“ *2661. Instrument left blank.*

Sec. 2645. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it with his name thereon, to another person, is called an indorser, and his act is called indorsement.

Sec. 2646. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

Sec. 2647. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

Sec. 2648. An indorsement may be general or special.

Sec. 2649. A general indorsement is one by which no indorsee is named.

Sec. 2650. A special indorsement specifies the indorsee.

Sec. 2651. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one, by writing above it a direction for payment to a particular person.

Sec. 2652. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

Sec. 2653. Every indorser of a negotiable instrument, unless his indorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be.
2. That he has a good title to it.
3. That the signatures of all prior parties are binding upon them.
4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same with interest, unless exonerated under the provisions of Sections 2722, 2749, 2785, 2791.

Sec. 2654. One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee thereon, as an indorser.

Sec. 2655. An indorser may qualify his indorsement with the words "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

Sec. 2656. Except as otherwise prescribed by the last section, an indorsement, without recourse, has the same effect as any other indorsement.

Sec. 2657. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

Sec. 2658. The want of consideration for the undertaking of a maker, acceptor, or indorser, of a negotiable instrument, does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

Sec. 2659. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

Sec. 2660. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

Sec. 2661. One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument, to an indorsee thereof in due course, in whatever manner and at whatever time it may be filed, so long as it remains negotiable in form.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

Section 2666. Effect of want of demand on principal debtor.
“ *2667. Presentment, how made.*
“ *2668. Apparent maturity, when.*
“ *2669. Presumptive dishonor of bill, payable after sight.*
“ *2670. Apparent maturity of bill, payable at sight.*
“ *2671. Apparent maturity of note.*
“ *2672. Same.*
“ *2673. Surrender of instrument, when a condition of payment.*

Sec. 2666. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment on his part.

Sec. 2667. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable dilligence it is practicable:

1. The instrument must be presented by the holder.

2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof or employed therein, if one can be found there.

3. An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein.

4. An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, wherever he may be found, at the option of the presentor; and,

5. The instrument must be presented on the day of its apparent maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payble at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

6. If the principal debtor have no place of business, or if his place of business or residence can not with reasonable diligence be ascertained, presentment for payment is excused.

Sec. 2668. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which by its terms it becomes due, or, when that is a holiday, the next business day.

Sec. 2669. A bill of exchange payable at a specified time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Sec. 2670. The apparent maturity of a bill of exchange payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Sec. 2671. The apparent maturity of a promissory note payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, six months after its date.

Sec. 2672. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

Sec. 2673. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,

2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,

3. If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

Section 2678. Dishonor, what.
" *2679. Notice, by whom given.*
" *2680. Form of notice.*
" *2681. Notice, how served.*
" *2682. Notice, how served after indorser's death.*
" *2683. Notice given in ignorance of death, valid.*
" *2684. Notice, when to be given.*
" *2685. Notice of dishonor, when to be mailed.*
" *2686. Notice, how given by agent.*
" *2687. Additional time for notice by indorsers.*
" *2688. Effect of notice of dishonor.*

Sec. 2678. A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused.

Sec. 2679. Notice of the dishonor of a negotiable instrument may be given:

1. By a holder thereof; or,

2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

Sec. 2680. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

Sec. 2681. A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally, at any place; or,

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,

3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the postoffice most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

Sec. 2682. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or, if there are none, then to any member of his family who resided with him at his death; or, if there is none, then it must be mailed to his last place of residence, as prescribed by Subdivision 3, of the last section.

Sec. 2683. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Sec. 2684. Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

Sec. 2685. When notice of dishonor is given by mail, it must be deposited in the postoffice in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

Sec. 2686. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

Sec. 2687. Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

Sec. 2688. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, enures to the benefit of all other parties thereto, whose right to give the like notice has not then been lost.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

Section 2693. Notice of dishonor, when excused.
" *2694. Presentment and notice, when excused.*
" *2695. Same.*
" *2696. Delay, when excused.*
" *2697. Waiver of presentment and notice.*
" *2698. Waiver of protest.*

Sec. 2693. Notice of dishonor is excused :

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged ; or,

2. When there is no postoffice communication between the town of the party by whom the notice should be given and the town in which the place of residence or business of the party to be charged is situated ; or,

3. When the party to be charged is the same person who dishonors the instrument ; or,

4. When the notice is waived by the party entitled thereto.

Sec. 2694. Presentment and notice are excused as to any party to a negotiable instrument who informs the holder, within ten days before its maturity, that it will be dishonored.

Sec. 2695. If, before or at the maturity of an instrument, an indorser has received full security for the payment thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

Sec. 2696. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

Sec. 2697. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

Sec. 2698. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

Sec. 2702. The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof and entitled by its terms to payment.

CHAPTER III.

BILLS OF EXCHANGE.

Article I. Form and interpretation.
" *II. Days of grace.*
" *III. Presentment for acceptance.*
" *IV. Acceptance.*
" *V. Acceptance or payment for honor.*
" *VI. Presentment for payment.*
" *VII. Excuse of presentment and notice.*
" *VIII. Foreign bills.*

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

Section 2706. Bill of exchange, what.
" *2707. Drawee, in case of need.*
" *2708. Bill in parts of a set.*
" *2709. When must be in a set.*
" *2710. Presentment, etc., of part of set.*
" *2711. Bill, where payable.*
" *2712. Rights and obligations of drawer.*

Sec. 2706. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

Sec. 2707. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

Sec. 2708. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

Sec. 2709. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

Sec. 2710. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

Sec. 2711. A bill of exchange is payable:

1. At the place where, by its terms, it is made payable; or,

2. If it specify no place of payment, then at the place to which it is addressed; or,

3. If it be not addressed to any place, then at the place of

residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

Sec. 2712. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument.

ARTICLE II.

DAYS OF GRACE.

Sec. 2715. Days of grace are not allowed.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

Section 2718. When a bill may be presented.
" *2719. Presentment, how made.*
" *2720. Presentment to joint drawees.*
" *2721. When presentment to be made to drawee in case of need.*
" *2722. Presentment, when must be made.*

Sec. 2718. At any time before a bill of exchange is payable the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored.

Sec. 2719. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

1. The bill must be presented by the holder or his agent.
2. It must be presented on a business day and within reasonable hours.
3. It must be presented to the drawee, or, if he is absent from his place of residence or business, to some person having charge thereof or employed therein; and,
4. The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

Sec. 2720. Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others.

Sec. 2721. A bill of exchange which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

Sec. 2722. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

ARTICLE IV.

ACCEPTANCE.

Section 2727. Acceptance, how made.
" *2728. Holder entitled to acceptance on face of bill.*
" *2729. What acceptance sufficient with consent of holder.*
" *2730. Acceptance by separate instrument.*
" *2731. Promise to accept, when equivalent to acceptance.*
" *2732. Cancellation by acceptance.*
" *2733. What is admitted by acceptance.*

Sec. 2727. An acceptance of a bill must be made in writing, by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words.

Sec. 2728. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

Sec. 2729. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill or upon a separate paper.
2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or,
3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately, without regard to its terms.

Sec. 2730. The acceptance of a bill of exchange by a separate instrument binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration.

Sec. 2731. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.

Sec. 2732. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder and before the holder has, with the consent of the acceptor, transferred his title to another person, who has given value for it upon the faith of such acceptance.

Sec. 2733. The acceptance of a bill of exchange admits the capacity of the drawer to draw and indorse it; and if written upon the bill it also admits the same to be genuine and binding upon the drawer; but it does not admit the signature of any indorser to be genuine.

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

Section 2738. When bill may be accepted or paid for honor.
" *2739. Holder of bill of exchange bound to accept payment for honor.*
" *2740. Acceptance for honor, how made.*
" *2741. How enforced.*
" *2742. Notice of dishonor not excused by acceptance for honor.*

Sec. 2738. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

Sec. 2739. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

Sec. 2740. An acceptor or payor for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

Sec. 2741. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an indorser after which the acceptor for honor must pay the bill.

Sec. 2742. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

Section 2747. Presentment, when bill not accepted, where made.
" *2748. Presentment of bill, payable at particular place.*
" *2749. Effect of delay in presentment, in certain cases.*
" *2750. Effect in other cases.*

Sec. 2747. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

Sec. 2748. A bill of exchange accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

Sec. 2749. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

Sec. 2750. Mere delay in presenting a bill of exchange, payable with interest, at sight or on demand, does not exonerate any party thereto.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

Section 2755. Presentment, when excused.
" *2756. Delay, when excused.*
" *2757. Presentment and notice, when excused.*

Sec. 2755. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

Sec. 2756. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

Sec. 2757. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

ARTICLE VIII.

FOREIGN BILLS.

Section 2762. Definitions.
" *2763. Protest necessary.*
" *2764. Protest, by whom made.*
" *2765. Protest, how made.*
" *2766. Protest, where made.*
" *2767. Protest, when to be made.*
" *2768. Protest, when excused.*
" *2769. Notice of protest, how given.*
" *2770. Waiver of protest.*
" *2771. Declaration before payment for honor.*
" *2772. Damages allowed on dishonor of foreign bill.*

Section 2773. Rate of damages.
" *2774. Interest on amount of protested bill.*
" *2775. Damages, how estimated.*
" *2776. Same.*

Sec. 2762. An inland bill of exchange is one drawn and payable within this State. All others are foreign.

Sec. 2763. Notice of the dishonor of a foreign bill of exchange can be given only by a notice of its protest.

Sec. 2764. Protest must be made by a notary public, if with reasonable diligence one can be obtained, and if not, by any reputable person, in the presence of two witnesses.

Sec. 2765. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it is made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or pay, or the inability of the drawee to give a binding acceptance, and in case of refusal, the reason assigned, if any; and finally, protesting against all the parties to be charged.

Sec. 2766. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

Sec. 2767. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time after.

Sec. 2768. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

Sec. 2769. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

Sec. 2770. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

Sec. 2771. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Sec. 2772. Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this State and protested for non-acceptance or non-payment.

Sec. 2773. Damages are allowed under the last section for bills drawn upon any person:

1. If drawn upon any person in this State, two dollars upon each one hundred dollars of the principal sum specified in the bill.

2. If drawn upon any person out of this State, but in any State or Territory of the United States, five dollars upon each one hundred dollars of the principal sum specified in the bill.

3. If drawn upon any person in any other place in North America or Europe, including Great Britain and Ireland, ten dollars upon each one hundred dollars of the principal sum specified in the bill.

4. If drawn upon any person in any other place, fifteen dollars upon each one hundred dollars of the principal sum specified in the bill.

Sec. 2774. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section.

Sec. 2775. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

Sec. 2776. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

Section 2781. Promissory notes, what.
" *2782. Certain instruments promissory notes.*
" *2783. Bill of exchange, when converted into a note.*
" *2784. Certain sections applicable to notes.*
" *2785. Effect of delay in presentment.*

Sec. 2781. A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

Sec. 2782. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

Sec. 2783. A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

Sec. 2784. Chapter I., of this Title, and Sections 2715 and 2750, of this Code, apply to promissory notes.

Sec. 2785. If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment, within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused.

CHAPTER IV.

CHECKS.

Section 2790. Check, what.
" 2791. Rules applicable to checks.

Sec. 2790. A check is a bill of exchange drawn upon a bank or banker, or a person described as such, upon the face thereof, and payable on demand, without interest.

Sec. 2791. A check is subject to all the provisions of this Code concerning bills of exchange, except that:

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby.
2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

TITLE XVI.

GENERAL PROVISIONS.

Sec. 2795. Except where it is otherwise declared, the provisions of the last foregoing fifteen Titles of this Part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the Chapter on Interpretation of Contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

DIVISION FOURTH.

Part I. Relief.
" II. Special relations of debtor and creditor.
" III. Nuisance.
" IV. Maxims of jurisprudence.
" V. Definitions and general provisions.

PART I.

RELIEF.

Title I. Relief in general.
" II. Compensatory relief.
" III. Specific and preventive relief.

TITLE I.

RELIEF IN GENERAL.

Section 2800. Species of relief.
" 2801. Relief in case of forfeiture.

Sec. 2800. As a general rule, compensation is the relief or remedy provided by the law of this State for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the Civil Code.

Sec. 2801. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty.

TITLE II.

COMPENSATORY RELIEF.

Chapter I. Damages in general.
" II. Measure of damages.

CHAPTER I.

DAMAGES IN GENERAL.

Article I. General principles.
" II. Interests as damages.
" III. Exemplary damages.

ARTICLE I.

GENERAL PRINCIPLES.

Section 2806. Person suffering detriment may recover damages.
" 2807. Detriment, what.
" 2808. Injuries resulting or probable after suit brought.

Sec. 2806. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault, a compensation therefor in money, which is called damages.

Sec. 2807. Detriment is a loss or harm suffered in person or property.

Sec. 2808. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

ARTICLE II.

INTEREST AS DAMAGES.

Section 2813. Person entitled to recover damages may recover interest thereon.
" 2814. In actions other than contract.
" 2815. Limit of rate by contract.
" 2816. Acceptance of principal waives claim to interest.

Sec. 2813. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paving the debt.

Sec. 2814. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

Sec. 2815. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

Sec. 2816. Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.

EXEMPLARY DAMAGES.

Sec. 2820. In any action for a breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

Article I. Damages for breach of contract.
" II. Damages for wrongs.
" III. Penal damages.
" IV. General provisions.

ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

Section 2823. Measure of damages for breach of contract.
" 2824. Damages must be certain.
" 2825. Breach of contract to pay liquidated sum.
" 2826. Dishonor of foreign bills of exchange.
" 2827. Detriment caused by breach of covenant of seizin, etc., what is.
" 2828. Detriment caused by breach of covenant against incumbrances, is what.
" 2829. Breach of agreement to convey real property.
" 2830. Breach of agreement to buy real property.
" 2831. Breach of agreement to sell personal property not paid for.
" 2832. Breach of agreement to sell personal property paid for.
" 2833. Breach of agreement to pay for personal property sold.
" 2834. Breach of agreement to buy personal property.
" 2835. Breach of warranty of title to personal property.
" 2836. Breach of warranty of quality of personal property.
" 2837. Breach of warranty of quality for special purpose.
" 2838. Breach of carrier's obligation to receive goods, etc.
" 2839. Breach of carrier's obligation to deliver.
" 2840. Carrier's delay.
" 2841. Breach of warranty of authority.
" 2842. Breach of promise of marriage.

Sec. 2823. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which in the ordinary course of things would be likely to result therefrom.

Sec. 2824. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

Sec. 2825. The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

Sec. 2826. For the dishonor of foreign bills of exchange damages are prescribed by Sections 2773, 2775, 2776.

Sec. 2827. The detriment caused by the breach of a covenant of seizin, of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property is deemed to be:

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property effected by the breach bore at the time of the grant to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years.

3. Any expenses properly incurred by the covenantee in defending his possession.

Sec. 2828. The detriment caused by the breach of a covenant against incumbrances, in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case, a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

Sec. 2829. The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

Sec. 2830. The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him.

Sec. 2831. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

Sec. 2832. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion.

Sec. 2833. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

Sec. 2834. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold, pursuant to Section 2598 the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale: or,

2. If the property has not been resold in the manner prescribed by Section 2598, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

Sec. 2835. The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner.

Sec. 2836. The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

Sec. 2837. The detriment caused by the breach of a warranty of the fitness of an article of personal property for particular purposes is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

Sec. 2838. The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

Sec. 2839. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

Sec. 2840. The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

Sec. 2841. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

Sec. 2842. The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

ARTICLE II.

DAMAGES FOR WRONGS.

Section 2847. Breach of obligation other than contract.
" *2848. Wrongful occupation of real property.*
" *2849. Willful holding over.*
" *2850. Conversion of real property.*
" *2851. Same.*
" *2852. Damages of lienor.*
" *2853. Seduction.*
" *2854. Injuries to animals.*

Sec. 2847. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

Sec. 2848. The detriment caused by the wrongful occupation of real property, in cases not embraced in Sections 2849, 2859 and 2860, of this Code, or provided in the Code of Civil Procedure, is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

Sec. 2849. For willfully holding over real property, by a person who entered upon the same, as guardian, or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

Sec. 2850. The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of its conversion, with the interest from that time; or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and,

2. A fair compensation for the time and money properly expended in pursuit of the property.

Sec. 2851. The presumption declared by the last section can not be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Sec. 2852. One having a mere lien on personal property can not recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by Section 2850 for the loss of time and expenses.

Sec. 2853. The damages for seduction rest in the sound discretion of the jury.

Sec. 2854. For wrongful injuries to animals, being subjects of property, committed willfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

ARTICLE III.

PENAL DAMAGES.

Section 2859. Failure to quit, after notice.
" 2860. Tenant willfully holding over.
" 2861. Injuries to trees, etc.
" 2862. Injuries inflicted in a duel.
" 2863. Same.

Sec. 2859. If any tenant give notice of his intention to quit the premises and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

Sec. 2860. If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

Sec. 2861. For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damage is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers, for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

Sec. 2862. If any person slays or permanently disables another person in a duel in this State, the slayer must provide for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

Sec. 2863. If any person slays or disables another person in a duel in this State, the slayer is liable for and must pay all debts of the person slain or permanently disabled.

ARTICLE IV.

GENERAL PROVISIONS.

Section 2868. Value, how estimated in favor of seller.
" 2869. Value, how estimated in favor of buyer.
" 2870. Property of peculiar value.
" 2871. Value of thing in action.
" 2872. Damages allowed in this Chapter, exclusive of others.
" 2873. Limitation of damages.
" 2874. Damages to be reasonable.
" 2875. Nominal damages.

Sec. 2868. In estimating damages the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

Sec. 2869. In estimating damages, except as provided by Sections 2870 and 2871, the value of property to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

Sec. 2870. Where a certain property has a peculiar value to a person recovering damages for deprivation thereof or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

Sec. 2871. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

Sec. 2872. The damages prescribed by this Chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

Sec. 2873. Notwithstanding the provisions of this Chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the Articles on Exemplary Damages, Penal Damages, and in Sections 2842, 2853, 2854.

Sec. 2874. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

Sec. 2875. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

Chapter I. General principles.
" II. Specific relief.
" III. Preventive relief.

CHAPTER I.

GENERAL PRINCIPALS.

Section 2880. Specific relief, etc., when allowed.
" 2881. Specific relief, how given.
" 2882. Preventive relief, how given.
" 2883. Not to enforce penalty, etc.

Sec. 2880. Specific or preventive relief may be given in the cases specified in this Title, and in no others.

Sec. 2881. Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant.

2. By compelling the party himself to do that which ought to be done; or,

3. By declaring and determining the rights of parties, otherwise than by an award of damages.

Sec. 2882. Preventive relief is given by prohibiting a party from doing that which ought not to be done.

Sec. 2883. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, or to enforce the penalty or forfeiture in any case.

CHAPTER II.

SPECIFIC RELIEF.

Article I. Possession of real property.
" II. Possession of personal property.
" III. Specific performance of obligations.
" IV. Revision of contracts.
" V. Rescission of contracts.
" VI. Cancellation of instruments.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

Sec. 2887. A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

Section 2890. Judgment for delivery.
" 2891. When holder may be compelled to deliver.

Sec. 2890. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.

Sec. 2891. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

Section 2896. In what cases compelled.
" 2897. Remedy mutual.
" 2898. No remedy unless mutual.
" 2899. Distinction between real and personal property.
" 2900. Contract signed by one party only may be enforced by others.
" 2901. Liquidation of damages not a bar to specific performance.
" 2902. What cannot be specifically enforced.

Section 2903. What parties cannot be compelled to perform.
" 2904. What parties cannot have specific performance in their favor.
" 2905. Specific performance not required when oppressive.
" 2906. Agreement to sell property by one who has no title.
" 2907. Relief against parties claiming under the person bound to perform.

Sec. 2896. Except as otherwise provided in this Article the specific performance of an obligation may be compelled:

1. When the act to be done is in the performance, wholly or partly, of an express trust.

2. When the act to be done is such that pecuniary compensation for its non-performance would not afford adequate relief.

3. When it would be extremely difficult to ascertain the actual damage caused by the non-performance of the act to be done; or,

4. When it has been expressly agreed, in writing, between the parties to the contract, that specific performance thereof may be required by either party, or that damages shall not be considered adequate relief.

Sec. 2897. When either of the parties to an obligation is entitled to a specific performance thereof, according to the provisions of the last section, the other party is also entitled to it, though not within those provisions.

Sec. 2898. Neither party to any obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely, or nearly so, together with the full compensation for any want of entire performance.

Sec. 2899. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

Sec. 2900. A party who has signed a written contract, may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

Sec. 2901. A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

Sec. 2902. The following obligations cannot be specifically enforced:

1. An obligation to render personal service, or to employ another therein;

2. An agreement to marry or live with another.

3. An agreement to submit a controversy to arbitration.

4. An agreement to perform an act, which the party has not power to perform lawfully when required to do so.

5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done, clearly ascertainable.

Sec. 2903. Specific performance cannot be enforced against a party to a contract, in any of the following cases:

1. If he has not received an adequate consideration for the contract.

2. If it is not, as to him, just and reasonable.

3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party, which has not been substantially fulfilled; or,

4. If his assent was given under the influence of mistake, misapprehension or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

Sec. 2904. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial and either entirely immaterial, or capable of being fully compensated; in which case specific performance may be compelled, upon full compensation being made for the default.

Sec. 2905. Specific performance cannot be compelled when it would operate more harshly upon the party required to perform than its refusal would operate upon the party seeking it.

Sec. 2906. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

Sec. 2907. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith, and for value, and except also that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.

REVISION OF CONTRACTS.

Section. 2912. When contract may be revised.

Section 2913. Presumption as to intent of parties.
" 2914. Principles of revision.
" 2915. Enforcement of revised contract.

Sec. 2912. When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done, without prejudice to rights acquired by third persons, in good faith and for value.

Sec. 2913. For the purpose of revising a contract it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Sec. 2914. In revising a written instrument the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Sec. 2915. A contract may be first revised and then specifically enforced.

ARTICLE V.

RESCISSION OF CONTRACTS.

Section 2920. When rescission may be adjudged.
" 2921. Rescission for mistake.
" 2922. Court may require party rescinding to do equity.

Sec. 2920. The rescission of a written contract may be adjudged on the application of a party aggrieved:

1. In any of the cases mentioned in Section 1474; or,

2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,

3. When the public interest will be prejudiced by permitting it to stand.

Sec. 2921. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Sec. 2922. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation or restoration to the other which justice may require.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

Section 2927. When cancellation may be ordered.
" 2928. Instrument obviously void.
" 2929. Cancellation in part.

Sec. 2927. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

Sec. 2928. An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury within the provisions of the last section.

Sec. 2929. Where an instrument is evidence of different rights or obligations it may be canceled in part and allowed to stand for the residue.

CHAPTER III.

PREVENTIVE RELIEF.

Section 2934. Preventive relief, how granted.
" *2935. Provisional injunctions.*
" *2936. Injunction, when allowed.*
" *2937. Injunction, when not allowed.*

Sec. 2934. Preventive relief is granted by injunction, provisional or final.

Sec. 2935. Provisional injunctions are regulated by the Code of Civil Procedure.

Sec. 2936. Except where otherwise provided by this Title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief.
2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.
3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,
4. Where the obligation arises from a trust.

Sec. 2937. An injunction cannot be granted.

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.
2. To stay proceedings in a court of the United States.
3. To stay proceedings in another State upon a judgment of a court of that State.
4. To prevent the execution of a public statute, by officers of the law, for the public benefit.
5. To prevent the breach of a contract, the performance of which would not be specifically enforced.
6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.
7. To prevent a legislative act by a municipal corporation.

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

Title I. General principles.
" II. Fraudulent instruments and transfers.
" III. Assignments for the benefit of creditors.

TITLE I.

GENERAL PRINCIPLES.

Section 2942. Who is a debtor.
" 2943. Who is a creditor.
" 2944. Contracts of debtor are valid.
" 2945. Payments in preference.
" 2946. Relative rights of different creditors.

Sec. 2942. A debtor, within the meaning of this Title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

Sec. 2943. A creditor, within the meaning of this Title, is one in whose favor an obligation exists by reason of which he is or may become entitled to the payment of money.

Sec. 2944. In the absence of fraud every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

Sec. 2945. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

Sec. 2946. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor, to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

Section 2951. Transfers, etc., with intent to defraud creditors.
" 2952. Certain transfers presumed fraudulent.
" 2953. Creditor's right must be judicially ascertained.
" 2954. Question of fraud, how determined.

Sec. 2951. Every transfer of property, or charge thereon made, every obligation incurred, every judicial proceeding taken, and every act performed, with intent to delay or defraud any creditor, or other person, of his demands, is void against all creditors of the debtor and their representatives or successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Sec. 2952. Every transfer of personal property, other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed, if made by a person having at the time, the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Sec. 2953. A creditor can avoid the act or obligation of his debtor for fraud, only where the fraud obstructs the enforcement, by legal process, of his right to take the property effected by the transfer or obligation.

Sec. 2954. In all cases arising under Section 1026, or under the provisions of this Title, except as otherwise provided in Section 2952, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

TITLE III.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

Section 2960. When debtor may execute assignment.
" *2961. Insolvency, what.*
" *2962. Certain transfers not affected.*
" *2963. What debts may be secured.*
" *2964. Preferences may be given for wages.*
" *2965. Preference must be absolute.*
" *2966. Certain rights not affected by preferences in assignment.*
" *2967. Joint and separate debts.*
" *2968. Assignment, when void.*
" *2969. The instrument of assignment.*
" *2970. Compliance with provisions of last section necessary to validity of assignment.*
" *2971. Assignee takes subject to rights of third parties.*

Section 2972. Inventory required.
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" *2984. Assignees protected for acts done in good faith.*
" *2985. Assent of creditors necessary to modification of assignment.*

Sec. 2960. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this Chapter, subject, however to the provisions of this Code, relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specific classes or persons.

Sec. 2961. A debtor is insolvent, within the meaning of this Title, when he is unable to pay his debts from his own means as they become due.

Sec. 2962. The provisions of this Title do not prevent a person residing in another State or country from making there, in good faith and without intent to evade the laws of this State, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this State, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

Sec. 2963. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

Sec. 2964. In all assignments of property made by any person, association, corporation, co-partnership, chartered company or corporation, to trustees or assignees on account of inability of the assignor or assignors at the time of the assignment to pay his or their debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such assignor or assignors for services rendered within sixty days immediately previous to such assignment, not to exceed two hundred dollars for each person, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of such assignor.

Sec. 2965. A preference, in an assignment for the benefit of creditors, can only be given absolutely, and without reserving any power of revocation.

Sec. 2966. No provision in an asignment, giving a preference to a creditor, can effect or impair any right of another creditor to priority of payment, whether created by law, or arising from an obligation or transaction of the parties.

Sec. 2967. Joint, or joint and several debtors, can prefer their joint creditors only out of joint property; and can prefer the individual creditors of each, only out of the separate property of each.

Sec. 2968. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

1. If it give a preference dependent upon any condition or contingency; or with any power of revocation reserved.

2. If it tend to coerce any creditor to release or compromise his demand.

3. If it provide for the payment of any claim known by the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor.

4. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid.

5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

6. If it exempt him from liability for neglect of duty or misconduct.

7. If it violates Section 1931, of this Code.

Sec. 2969. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by the Chapter on Recording Transfers of Real Property, and recorded as required by Sections 2974 and 2975; but recording in one county constitutes a compliance with the last mentioned sections. The assignment must be accompanied by the affidavit of the assignor and assignee that such assignment is made in good faith, for the benefit of the creditors of the assignor and without any design to hinder, delay, or defraud such creditors. The assent of the assignee, subscribed and acknowledged by him must appear in writing, embraced in, or at the end of, or indorsed upon, the assignment, before the same is recorded, and, if separate from the assignment, must be duly acknowledged.

Sec. 2970. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void, against every creditor of the assignor not assenting thereto.

Sec. 2971. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor has, in respect to things in action, transferred by the assignment.

Sec 2972. Within twenty days after an assignment is made for the benefit of creditors the assignor must make and file, in the manner prescribed by section 2974, a full and true inventory, showing:

1. All the creditors of the assignor.

2. The place of residence of each creditor, if known to the assignor; or if not known, that fact must be stated.

3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account or otherwise.

4. The true consideration of the liability in each case and the place where it arose.

5. Every existing judgment, mortgage or other security for the payment of any debt or liability of the assignor.

6. All property of the assignor at the date of the assignment, which is exempt by law from execution; and,

7. All of the assignor's property at the date of the assignment, both real and personal of every kind, not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property, according to the best knowledge of the assignor.

Sec. 2973. An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief; but in case such assignor shall omit, neglect or refuse to make and deliver such inventory within the twenty days required, the assignee named in such assignment shall, within thirty days after the date thereof, cause to be made and delivered to the judge of the District Court of the county where such assignment is recorded, such inventory as above required, in so far as he can; and for such purpose, said judge shall, at any time upon the application of such assignee, compel by order such delinquent assignor, and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess, necessary to the proper making of such inventory. The assignee shall verify the inventory so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief. But in case the said assignee shall be unable to make and file such inventory within said thirty days, the district judge may, upon application upon oath, showing such inability, allow him such further time as shall be necessary, not exceeding sixty days. If the assignee fail to make and file such inventory within said thirty days, or such further time as may be allowed, the district judge shall require, by order, the assignee forthwith to appear before him and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal. The books and papers of such delinquent assignor shall at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is hereby declared to be a contempt, and obedience to such order may be enforced by attachment. The inventory shall be filed by said district judge in the office of the clerk of said county in which said assignment is recorded.

Sec. 2974. An assignment for the benefit of creditors must be recorded, and the inventory required by Section 2972, filed with the county clerk of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this State, with the clerk of the county in which his principal place of business was then situated; or, if he had not then a residence or a place of business in this State, with the clerk of the county in which the principal part of the assigned property was then situated.

Sec. 2975. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded, and a copy of the inventory required by Section 2972 must be filed with the county clerk of the county in which any of the assignors resided at its date, or in which any of them, not then residing in this State, had then a place of business.

Sec. 2976. An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and incumbrancers in good faith and for value, unless it is recorded within twenty days after the date of the assignment.

Sec. 2977. Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of Article IV., of the Chapter on Recording Transfers, as well as to those of this Title.

Sec. 2978. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the State, for the use and benefit of the creditors in such amount as may be fixed by a judge of the District Court of the county in which the original inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

Sec. 2979. Until the inventory and affidavit required by

Sections 2972 and 2973 have been made and filed, and the assignee has given a bond as required by the last section, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

But in case the assignor shall fail to present such inventory within the twenty days required, then the assignee, before the ten days shall have elapsed, may apply to said district judge by verified petition, for leave to file a provisional bond, until such time as he may be able to present the inventory as hereinbefore provided.

The district judge shall, in the case provided in Section 2973, and may also, at any time, on the petition of one or more creditors, showing misconduct or incompetency of the assignee, or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than five days to the assignor, assignee, surety and such other person as such judge may prescribe, remove or discharge the assignee, and appoint one or more in his place, and order an accounting of the assignee so removed or discharged, and may enjoin said assignee from interfering with the assignor's estate, and make provision by order for the safe custody of the same, and enforce obedience to such injunction and orders by attachment; and, upon his discharge, upon his own application, such assignee's bond shall be canceled and discharged. The new assignee shall give a bond, to be approved as required.

The district judge shall have power, by order, to require or allow any inventory or schedule filed to be corrected or amended, and also to require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe, and to enforce obedience to such orders by attachment.

Sec. 2980. The district judge may, upon his own motion, or upon the application of any party in interest, and on such notice as he may direct to be given to the assignor, assignee and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

Sec. 2981. After six months from the date of an assignment for the benefit of creditors the assignee may be required, on petition of any creditor, to account before the District Court of the county where the accompanying inventory was filed in the manner prescribed by the Code of Civil Procedure.

Sec. 2982. Property exempt from execution and insurance upon the life of the assignor do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

Sec. 2983. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians; but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

Sec. 2984. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

Sec. 2985. An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

PART III.

NUISANCE.

Title I. General principles.
" *II. Public nuisances.*
" *III. Private nuisances.*

TITLE I.

GENERAL PRINCIPLES.

Section 2990. Nuisance, what.
" *2991. Public nuisance.*
" *2992. Private nuisance.*
" *2993. What is not deemed a nuisance.*
" *2994. Successive owners.*
" *2995. Abatement does not preclude action.*

Sec. 2990. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street or highway, is a nuisance.

Sec. 2991. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Sec. 2992. Every nuisance not included in the definition of the last section, is private.

Sec. 2993. Nothing which is done or maintained under the express authority of the statute can be deemed a nuisance.

Sec. 2994. Every successive owner of property, who neglects to abate a continuing nuisance upon, or, in the use of, such property, created by a former owner, is liable therefor, in the same manner as the one who first created it.

Sec. 2995. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

TITLE II.

PUBLIC NUISANCES.

Section 3000. Lapse of time does not legalize.
" 3001. Abatement.
" 3002. When notice is required.
" 3003. Remedies for public nuisance.
" 3004. Action.
" 3005. How abated.

Sec. 3000. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Sec. 3001. The remedies against a public nuisance are:
1. Indictment or information.
2. A civil action; or,
3. Abatement.

Sec. 3002. The remedy by indictment or information is regulated by the Penal Code.

Sec. 3003. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

Sec. 3004. A public nuisance may be abated by any public body or officer authorized thereto by law.

Sec. 3005. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing that constitutes the same, without committing a breach of the peace or doing unnecessary injury.

TITLE III.

PRIVATE NUISANCES.

Section 3010. Remedies for private nuisance.
" 3011. Abatement, when allowed.
" 3012. When notice is required.

Sec. 3010. The remedies against a private nuisance are:
1. A civil action; or,
2. Abatement.

Sec. 3011. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury.

Sec. 3012. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART IV.

MAXIMS OF JURISPRUDENCE.

Sec. 3020. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this Code, but to aid in their just application.

Sec. 3021. When the reason of a rule ceases so should the rule itself.

Sec. 3022. Where the reason is the same the rule should be the same.

Sec. 3023. One must not change his purpose to the injury of another.

Sec. 3024. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

Sec. 3025. One must so use his own rights as not to infringe upon the rights of another.

Sec. 3026. He who consents to an act is not wronged by it.

Sec. 3027. Acquiescence in error takes away the right of objecting to it.

Sec. 3028. No one can take advantage of his own wrong.

Sec. 3029. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

Sec. 3030. He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

Sec. 3031. No one should suffer for the act of another.

Sec. 3032. He who takes the benefit, must bear the burden.

Sec. 3033. One who grants a thing is presumed to grant also whatever is essential to its use.

Sec. 3034. For every wrong there is a remedy.

Sec. 3035. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

Sec. 3036. Between rights otherwise equal, the earliest is preferred.

Sec. 3037. No man is responsible for that which no man can control.

Sec. 3038. The law helps the vigilant, before those who sleep on their rights.

Sec. 3039. The law respects form less than substance.

Sec. 3040. That which ought to have been done, is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

Sec. 3041. That which does not appear to exist is to be regarded as if it did not exist.

Sec. 3042. The law never requires impossibilities.

Sec. 3043. The law neither does nor requires idle acts.

Sec. 3044. The law disregards trifles.

Sec. 3045. Particular expressions qualify those which are general.

Sec. 3046. Contemporaneous exposition is in general the best.

Sec. 3047. The greater contains the less.

Sec. 3048. Superfluity does not vitiate.

Sec. 3049. That is certain which can be made certain.

Sec. 3050. Time does not confirm a void act.

Sec. 3051. The incident follows the principal, and not the principal the incident.

Sec. 3052. An interpretation which gives effect is preferred to one which makes void.

Sec. 3053. Interpretation must be reasonable.

Sec. 3054. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

PART V.

DEFINITIONS AND GENERAL PROVISIONS.

Section 3060. When this Code takes effect.
" *3061. Not retroactive.*
" *3062. Rules of construction.*
" *3063. Provisions similar to existing laws, how construed.*
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" *3081. Duty of county clerk.*
" *3082. Effect of repeal.*
" *3083. Statutes repealed.*
" *3084. This act, how cited.*

Sec. 3060. This Code takes effect at 12 o'clock noon on the first day of July, 189 .

Sec. 3061. No part of it is retroactive, unless expressly so declared. In this State there is no common law in any case where the law is declared by the Code or other statute; but where not so declared, if the same is applicable and of a general nature, and not in conflict with the Codes or other statutes, the common law shall be the law and rule of decision.

Sec. 3062. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this State respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

Sec. 3063. The provisions of this Code, so far as they are substantially the same as existing statutes, or the common law, must be construed as continuations thereof, and not as new enactments.

Sec. 3064. No action or proceeding commenced before this Code takes effect and no right accrued is affected by its provisions.

Sec. 3065. Holidays, within the meaning of this Code, are: Every Sunday, the 1st day of January, the 22nd day of February, the 30th day of May, the 4th day of July, the first Monday of September, the 25th day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving, or holiday. If the first day of January, the 22nd day of February, the 30th day of May, the 4th day ofJuly or the 25th day of December, fall upon a Sunday, the Monday following is a holiday.

Sec. 3066. All other days than those mentioned in the next preceding section are to be deemed business days for all purposes.

Sec. 3067. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and then it is also excluded.

Sec. 3068. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed, by law or contract, to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

Sec. 3069. Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

Sec. 3070. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in Section 3072, are to be construed according to such peculiar and appropriate meaning and definition.

Sec. 3071. Whenever the meaning of a word or phrase is defined in any part of this Code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

Sec. 3072. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one in the term "depose;" signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes property real and personal.

2. The words "real property" are co-extensive with lands, tenements, hereditaments and possessory titles to public lands in this State.

3. The words "personal property" include money, goods, chattels, things in action and evidences of debt.

4. The word "year," as used in this Code, means a calendar year, and "month" a calendar month, unless otherwise expressed. Fractions of a year are to be computed by the number of months, thus, half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day and involve no questions of priority.

5. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories, and the words "United States" may include the District and Territories.

6. The word "will" includes codicils.

Sec. 3073. The words "third person," as used in this Code, includes all who are not parties to the obligations or transaction concerning which the phrase is used.

Sec. 3074. Usage, within the meaning of this Code, is a reasonable and lawful public custom, concerning the transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties, or so well established, general and uniform, that they must be presumed to have acted with reference thereto.

Sec. 3075. The word "usual," and "customary," as used in this Code, mean, "according to usage."

Sec. 3076. Notice is :

1. Actual—which consists in express information of a fact.
2. Constructive—which is imputed by law.

Sec. 3077. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself, in all cases in which, by prosecuting such inquiry, he might have learned such facts.

Sec. 3078. Every law, unless a different time shall be prescribed therein, shall commence and take effect throughout this State, on, and not before, the twentieth day after the day of its final passage.

Sec. 3079. The words "final passage," as used in the preceding section, shall be held to mean the enactment into law, of a bill which has passed the Legislative Assembly, either with or without the approval of the Governor, as provided in Section 12, of Article VII., of the Constitution.

Sec. 3080. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect; and whenever the words "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

Sec. 3081. The county clerk of any county, is also clerk of the county commissioners and ex-officio recorder.

Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or as recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners, or as recorder.

Sec. 3082. No statute, law, or rule, is continued in force because it is consistent with the provisions of this Code on the same subject; but in all cases provided for by this Code, all statutes, laws, and rules heretofore in force in this State, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed or abrogated.

This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this Code provided.

Sec. 3083. Subject to the provisions of the next preceding section the following statutes and parts of statutes are hereby repealed, to-wit: Sections 140; 409 to 430, inclusive; 432 to 557, inclusive, of the Probate Practice Act of the Compiled Statutes; Sections 1 to 10, inclusive; Section 20; sections 156 to 161, inclusive; 202 to 210, inclusive; 211 to 287, inclusive; 442 to 729, inclusive; 983, 984; 999 to 1006, inclusive; 1204; 1236 to 1238, inclusive; 1239 to 1266, inclusive; 1296; 1411 to 1432, inclusive; 1439 to 1450, inclusive; 1538 to 1555, inclusive, except 1545, 1547, 1551, 1554; Sections 1597 to 1608 inclusive; Sections 1963 and 1970; Sections 1983 to 1985, inclusive, of the Fifth Division of the Compiled Statutes; Section 1, page 60, Extra Session Laws, 1887, concerning marriages; Section 1, page 121, laws Sixteenth session, concerning alimony; Sections 1 to 25, inclusive, of "Act Concerning Dower," of Session Laws of 1876.

Sec. 3084. This Act, whenever cited, enumerated, referred to, or amended may be designated simply as "The Civil Code," adding, when necessary, the number of the section.

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—TO—

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